



TOWN OF PALM BEACH

Town Manager's Office

**TENTATIVE-
SUBJECT TO
REVISION**

TOWN COUNCIL MEETING

**TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD**

AGENDA

TUESDAY, SEPTEMBER 14, 2010

9:30 A.M.

For information regarding procedures for public participation at Town Council Meetings, please refer to the end of this agenda.

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

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.

- I. CALL TO ORDER AND ROLL CALL
- II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

None

IV. COMMENTS OF MAYOR JACK McDONALD

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. | <u>MINUTES: AUGUST 10, 2010</u>
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING | Page 12 |
| B. | <u>MINUTES: AUGUST 10, 2010</u>
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING (BREXEL VS TOWN OF PALM BEACH) | Page 30 |
| C. | <u>MINUTES: AUGUST 11, 2010</u>
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING | Page 34 |
| D. | <u>MINUTES: AUGUST 12, 2010</u>
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING (BUDGET) | Page 52 |
| E. | APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON AUGUST 25, 2010. | Page 65 |
| F. | RESOLUTIONS | |
| 1. | <u>RESOLUTION NO. 97-10</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Renewal of the Consulting Services Agreement Between the Town of Palm Beach and Research Atlantica, Inc. as Historic Landmarks Preservation Consultant, in an Amount Not to Exceed \$45,850, and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[John S. Page, Director of Planning, Zoning, and Building] | Page 81 |

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|----|---|----------|
| 2. | <u>RESOLUTION NO. 99-10</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$68,590 to Tree Huggers Landscaping and Nursery, LLC, for Grounds Maintenance Services, Establishing a Total Not-to-Exceed Budget of \$75,000 for Said Services, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services. [H. Paul Brazil, Director of Public Works] | Page 88 |
| 3. | <u>RESOLUTION NO. 102-10</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting the 2009 Revised Unified Palm Beach County Local Mitigation Strategy Plan; Providing an Effective Date; and for Other Purposes. [Jay Boodheshwar, Director of Recreation] | Page 93 |
| 4. | <u>RESOLUTION NO. 106-10</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Purchase and Installation of a Harris Cell Site Antenna System Based upon a Quote from Citation Communications in the Amount of \$41,167 to Provide Essential Police and Fire-Rescue Radio Coverage the Southern Area of the Town and Authorizing the Town Manager or the Town Managers's Designee to Execute Any Documents Necessary to Effectuate Said Purchase and Installation. [Kirk W. Blouin, Police Chief] | Page 98 |
| 5. | <u>RESOLUTION NO. 108-10</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Designating Town Depositories for Fiscal Year 2011 Pursuant to Section 2-517 of the Town Code of Ordinances and Designating Parties to Sign Checks or Warrants on Behalf of the Town Pursuant to Section 2-36 of the Town Code of Ordinances. [Jane Struder, Director of Finance] | Page 103 |

G. OTHER

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|----|--|----------|
| 1. | Authorization to Extend Air-Conditioning Contract for FY11 in an Amount Not-to-Exceed \$40,000. [H. Paul Brazil, Director of Public Works] | Page 108 |
| 2. | Authorization to Extend Compacted Garbage Collection Contract for FY11 at a Cost of \$236,714.55. [H. Paul Brazil, Director of Public Works] | Page 110 |
| 3. | Authorization to Extend Janitorial Contract for FY11 at a Cost of \$118,200. [H. Paul Brazil, Director of Public Works] | Page 112 |

4.	Authorization to Extend Hedge Trimming Contract for FY11 at a Cost of \$46,479.60. [H. Paul Brazil, Director of Public Works]	Page 114
5.	Authorization to Extend Lethal Yellowing Contract for FY11 at a Cost of \$37,775.25. [H. Paul Brazil, Director of Public Works]	Page 116
6.	Authorization to Extend Street Sweeping Contract for FY11 at a Cost of \$113,206.56. [H. Paul Brazil, Director of Public Works]	Page 118
7.	Authorization to Extend Turf Maintenance Contract for FY11 at a Cost of \$60,349.92. [H. Paul Brazil, Director of Public Works]	Page 120
8.	Approval of Selection Committee for Environmental and Geotechnical Services. [H. Paul Brazil, Director of Public Works]	Page 122
9.	Appointment of “Blue Ribbon” Panel Per PERC Ordinance Appendix “A” Section 1.003. [Danielle Olson, Director of Human Resources]	Page 124
10.	Approval of Contingency Allocation for Legal Expenses and Compensated Absences. [Jane Struder, Director of Finance]	Page 126
11.	Authorization to Renew Par 3 Labor Contract for FY11 at a Cost Not-to-Exceed \$161,500. [Jay Boodheshwar, Director of Recreation]	Page 128
IX.	BOARD/COMMISSION ANNUAL REPORT	
A.	Firefighters’ Retirement Board of Trustees. [Wilbur Ross, Chair, and William Hanes, Pension Administrator]	Page 130
B.	Police Officers’ Retirement Board of Trustees. [Raymond Snow, Chair, and William Hanes, Pension Administrator]	Page 140
X.	COMMITTEE REPORTS	
A.	Ordinances, Rules, and Standards Committee of August 26, 2010. [William J. Diamond, Town Council Member]	Page 150
XI.	REGULAR AGENDA	
A.	Old Business	
1.	Accelerated Capital Improvement Program. [H. Paul Brazil, Director of Public Works]	Page 156

- a. Overview of Current Status and Plans for the Future.
- b. RESOLUTION NO. 87-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$593,000 to Mock, Roos & Associates, Inc., for the D-15 (D-6 & D-7) Pump Station Design and Bid Administration Services, Establishing a Total Design Phase Budget of \$620,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements.
Deferred from the August 10, 2010, Town Council Meeting. Page 165
- c. Worth Avenue Project Update.
Requested at the August 10, 2010, Town Council Meeting. Page 199
- d. RESOLUTION NO. 100-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor to Execute an Interlocal Agreement with the City of West Palm Beach for a Subaqueous Force Main Project. Page 203
- e. RESOLUTION NO. 101-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to AECOM USA, Inc., in the Amount of \$74,468 for the A-42 and A-43 Sanitary Pump Stations Improvements, Establishing a Design and Construction Documents Phase Budget of \$81,915 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete this Phase of Said Improvements. Page 233
- f. RESOLUTION NO. 103-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to AECOM USA, Inc., in the Amount of \$58,063 for the A-42 to A-43 Force Main Improvements, Establishing a Design and Construction Documents Phase Budget of \$63,869 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete this Phase of Said Improvements. Page 237

- g. RESOLUTION NO. 105-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$35,300 to Kimley-Horn and Associates, Inc., for the Sewage Force Main Intracoastal Waterway Crossing Construction and Bid Administration Services, Establishing a Total Construction Phase Budget for \$40,600 for Said Services, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services. Page 241

B. New Business

1. Recreation Commission's Intended Process and Time Line for Consideration of Privatization Alternatives and Other Potential Modification of Recreation Programs and Facilities. [Jay Boodheshwar, Director of Recreation] Page 245
2. Internal Audit Reports. [Robert N. Wildrick, Town Council Member] Page 253
- a. Construction Project Bidding and Contract Administration.
- b. Construction in Process Accounting
3. RESOLUTION NO. 96-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Proposed Liability, Property, Workers' Compensation, Automobile, Loss Fund Insurance Coverages and other Insurance Coverages incidental to the Town's operations for FY2011; Approving the Proposed Preferred Governmental Claims Solutions Claims Management Services Fee; Approving the Insurance Agent Services Agreement with Wells Fargo Insurance Services and Authorizing the Town Manager to Execute the Agreement on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager] Page 283
4. RESOLUTION NO. 107-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Pursue a Special Category Grant from the Florida Department of State, Division of Historical Resources for the Restoration of Addison Mizner's Memorial Fountain, Subject to Prior Approval by the Town Attorney of the Grant Agreement for Legal Form and Sufficiency. [John S. Page, Director of Planning, Zoning, and Building] Page 304

5. Possible Return to One-Day Town Council Meetings.
[David A. Rosow, Town Council President]

XII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 24-10 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 at Subdivision IV, Section 82-111, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William Hanes, Pension Administrator] Page 312
2. ORDINANCE NO. 25-10 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 at Subdivision III, Firefighters, Section 82-91, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William Hanes, Pension Administrator] Page 316

B. First Reading

1. ORDINANCE NO. 27-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 18, Building and Building Regulations, Section 108.2(l) Permit Fees; Providing for State Required Building Permit Fee Surcharges; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager] Page 319
2. ORDINANCE NO. 28-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 78 Peddlers and Solicitors, Article II Peddlers, Section 78-40; and at Article III Charitable Solicitations, Sections 78-102 and 78-105, so as to Provide for an Administrative Processing Fee and Late Fees as Adopted by Resolution of the Town Council Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

3. ORDINANCE NO. 29-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 106, Streets, Sidewalks, and Other Public Places, at Article VI, Parades, Division 2, Permit, Section 106-216, So as to Exempt the Town of Palm Beach from the Requirements Relating to Parade Permits for Parades Officially Sponsored by the Town of Palm Beach with Approval of the Town Council; Providing an Amendment to Article VII, Special Events on Public Property, Division 2, Permit, Section 106-281, Exempting the Town from Requirements for Permitting and Regulations Relating to Special Events; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John C. Randolph, Town Attorney]

XIII. ANY OTHER MATTERS

XIV. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** 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.
- Note 2:** 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.
- Note 3:** 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.
- Note 4:** A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

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

PUBLIC HEARINGS:

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

COMMUNICATIONS FROM CITIZENS:

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

OTHER AGENDA ITEMS:

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

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

Town of Palm Beach Meeting Schedule

9/8/10

Mon 09/13/2010 05:01 PM	First Public Hearing Re: Adoption of FY11 Town Budget	Council Chambers
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Tue 09/14/2010 09:30 AM	Town Council Meeting	Council Chambers
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Wed 09/15/2010 09:30 AM	Town Council Meeting (Development Review)	Council Chambers
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Thu 09/16/2010 09:30 AM	Landmarks Preservation Commission Meeting	Council Chambers
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Tue 09/21/2010 09:30 AM	Planning & Zoning Commission Meeting	Council Chambers
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Wed 09/22/2010 09:00 AM	Architectural Commission (ARCOM) Meeting	Council Chambers
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Tue 09/28/2010 02:00 PM	Ordinances, Rules, and Standards Committee Meeting	Council Chambers
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Wed 09/29/2010 09:30 AM	Administrative and Personnel Committee Meeting	Council Chambers
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Wed 09/29/2010 05:01 PM	Second and Final Public Hearing Re: Adoption of FY11 Town Budget	Council Chambers
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Wed 10/06/2010 09:00 AM	Special Recreation Advisory Commission Meeting	Council Chambers
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Tue 10/12/2010 09:30 AM	Town Council Meeting	Council Chambers
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Wed 10/13/2010 09:30 AM	Town Council Meeting (Development Review)	Council Chambers
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Tue 10/19/2010 09:30 AM	Planning & Zoning Commission Meeting	Council Chambers
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Wed 10/20/2010 09:00 AM	Landmarks Preservation Commission Meeting	Council Chambers
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Wed 10/27/2010 09:00 AM	Architectural Commission (ARCOM) Meeting	Council Chambers
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Thu 10/28/2010 09:00 AM	Shore Protection Board Meeting	Council Chambers
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Wed 11/03/2010 09:00 AM	Recreation Advisory Commission Meeting	Recreation Center
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Tue 11/09/2010 09:30 AM	Town Council Meeting	Council Chambers
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Wed 11/10/2010 09:30 AM	Town Council Meeting (Development Review)	Council Chambers
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TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: AUGUST 10, 2010

APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

Presenter

Joanna Cunningham, Town Clerk

Supporting Documents

- Minutes of the Regular Town Council Meeting held on August 10, 2010

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON TUESDAY, AUGUST 10, 2010**

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Tuesday, August 10, 2010, at 9:30 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 Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

III. PRESENTATIONS

There were none.

IV. COMMENTS OF MAYOR JACK McDONALD

There were none.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Diamond commented about two items. The first was that he had received a number of complaints about the manner in which public comments are permitted, by having to wait until that particular agenda item. Sometimes the public may have to wait until after lunch. If the item is not a time- certain, residents have to wait a long time. He asked that the Town Council consider anyone the opportunity to speak during public comments.

Council Member Diamond's second comments were related to the Worth Avenue Restoration project. He asked that at next month's Town Council Meeting, that an update be provided concerning the time-line, costs, and progress etc.

Council Member Kleid commented on Council Member Diamond's comments. He stated that when anyone has stated that they could not stay, they have been permitted to speak. Council President Rosow opened the discussion further. Council President Pro Tem Coniglio added that

the Mayor's history may be helpful and comments were open and available to anyone that wanted to speak. She stated that comments were encouraged at time of item because there may be lengthy debate.

Mayor McDonald informed the Town Council that afternoon comments were added six to seven years ago in addition to the morning comments.

Council Member Wildrick felt Council President Rosow has handled the meetings well, and if someone needed to leave, they could be heard. The consensus was to allow public input, and if it was a time certain item, it was best to wait for that item. Encourage public to speak on any item, and allow them to speak if they could not stay.

Council Member Wildrick said that another issue had cropped up and it was a sticky issue where someone yields their time to another person to have more speaking time. In those cases, there should not be filibustering, but the Town Council needed input. There needs to be more control, and if a person has a lengthy speech, they should submit it to the Town Manager's office and be part of the back-up.

Council Member Diamond did not want anyone to lose the right to speak. Town Attorney Randolph cautioned that in quasi-judicial matters when people are sworn in, there could be an issue with someone summarizing their comments for applicant if someone speaks beforehand. Council President Rosow indicated that was a good point.

Council Member Kleid stated that the Centennial Committee created a commemorative tie that Council Member Diamond was wearing. Council Member Diamond modeled the tie and announced that it was available in three colors.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

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

Jack Cohen, 3450 S. Ocean Blvd., spoke regarding the budget and was in opposition of the possible elimination of the Citizens Police Academy.

VII. APPROVAL OF AGENDA

Item E.5. Resolution No. 93-10 was pulled from the Consent Agenda and moved to Item XI.A.2.

Item E.1. Resolution No. 84-10 was pulled from the Consent Agenda and moved to Item XI.A.3.

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

VIII. CONSENT AGENDA

A. MINUTES: JULY 13, 2010

APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: JULY 13, 2010

APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
(BREXEL VS TOWN OF PALM BEACH)

C. MINUTES: JULY 14, 2010

APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL
COMMISSION AT ITS MEETING ON JULY 28, 2010.

E. RESOLUTIONS

1. RESOLUTION NO. 84-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$216,329 to Community Asphalt Corporation, for the Annual Roadway Paving and Resurfacing, Establishing a Total Budget of \$250,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements. [H. Paul Brazil, Director of Public Works]

This Item was pulled from the Consent Agenda and moved to Item XI.A.3.

2. RESOLUTION NO. 85-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute the Florida Energy and Climate Commission Grant Agreement and All Other Documents Associated Therewith on Behalf of the Town, Subject to Town Attorney Prior Approval of the Grant Agreement for Legal Form and Sufficiency. [Thomas G. Bradford, Deputy Town Manager]

3. RESOLUTION NO. 88-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$47,250 to Standby Systems, Inc, for the Purchase of One (1) 125-KW Baldor Standby Generator for the D-18 Pump Station via the Florida Sheriffs Association Contract No. 09-17-0908, Establishing a Total Budget of \$67,000. [H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO. 92-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding RFP No. 2010-22 to Wachovia Bank, a Division of Wells Fargo Bank, N.A. for Banking Services, and Authorizing the Town Manager to Execute an Agreement on Behalf of the Town. [Jane Struder, Director of Finance]

5. RESOLUTION NO. 93-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Annual Funding Application to the Florida Department of Environmental Protection, Beach Erosion Control Program. [H. Paul Brazil,

Director of Public Works]

This item was pulled from the Consent Agenda and moved to Item XI.A.2.

6. RESOLUTION NO. 94-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Kent Security Services, Inc., in an Amount Not to Exceed \$48,951.00 for the Provision of Armed Security Guard Services, Bid No. 2010-23; Authorizing the Town Manager to Take Further Action Necessary to Effectuate the Contract. [Jay Boodheshwar, Director of Recreation]

F. OTHER

1. Approval of Modified Selection Committee for Construction Program Management Services.[H. Paul Brazil, Director of Public Works]

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

IX. COMMITTEE REPORTS

- A. Ordinances, Rules, and Standards Committee Meeting of July 27, 2010. [William J. Diamond, Town Council Member]

Council Member Diamond presented the ORS report.

Council Member Wildrick asked for clarification on the sale of liquor ordinance that was passed. Council Member Diamond explained that it allowed for carry-out and purchase of alcohol from grocery stores at 7:00 a.m. on Sundays. Liquor sales still remained under the state guidelines.

Motion to accept the ORS report was made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

X. PUBLIC HEARINGS

- A. RESOLUTION NO. 89-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Removal of a Historic or Specimen Tree from a Property Located Within the Town of Palm Beach; Providing for the Recording of Said Designation; and Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County [H. Paul Brazil, Director of Public Works]

1 Town Clerk Cunningham administered the oath to Public Works Director Paul Brazil, who
2 presented the item. He testified that the historic tree was struck by lightning and was removed.
3 The Public Records needed to be updated to de-designate the historic tree.

4
5 Town Attorney Randolph read Resolution No. 89-10, by title, as printed above.

6
7 **Motion to approve Resolution No. 89-10 was made by Council Member Diamond, seconded**
8 **by Council Member Kleid. On roll call, the motion carried unanimously.**
9

10 Council President Pro Tem Coniglio commented on the item and the requirement of having a
11 replacement tree planted. The Garden Club looks for new candidates for the replacement
12 program.
13

14 **XI. REGULAR AGENDA**

15 **A. Old Business**

16
17 **1. Public Parking for the Clarke Avenue Beach Access.[H. Paul Brazil, Director of Public**
18 **Works]**

19 Public Works Director Brazil presented the item. He noted that Coastal Coordinator Robert
20 Weber had met twice with the residents. Unanimously, the residents are opposed to having the
21 parking returned to Clarke Avenue. Staff needed direction from the Town Council. He also
22 suggested having the signage indicate parking is open from 9:00 a.m. until 6:00 p.m.

23 Council Member Diamond noted that the he attended both meetings. he said there was no easy
24 solution Residents on Sea Spray don't want the spaces and the residents on Clarke do not want
25 the spaces back.

26 **Motion made by Council Member Diamond to defer this item until December when more**
27 **residents were back in Town.**

28
29 **The Motion died for lack of a second.**
30

31 Town Manager Elwell provided a supplemental piece of information that the reason the issue
32 was important. The twenty five spaces are required for receiving State funding the Town
33 receives for maintaining the Mid-Town public beach.

34
35 Council President Pro Tem Coniglio commented that this was a tough decision and a tough pill
36 to swallow. She asked how long the spaces had been on Clarke prior to them being moved the
37 year prior. Town Manager Elwell responded that parking had already been on Clarke, and 1995
38 was the initial restoration project.
39

1 Council President Pro Tem Coniglio stated that when she was on the Town Council, they had
2 lost seven spots on Clarke Avenue, and tried to move the spaces to the Sea streets.
3 Unfortunately, the residential areas have been tremendously impacted.

4
5 Public Works Director Brazil agreed and stated that the beachgoers were creating new accesses,
6 trespassing, and damaging the dunes. Clarke Avenue has a designated, physical beach access.
7 Council President Pro Tem Coniglio said very clearly there were policing issues, and trash
8 issues. She asked for more enforcement of the illegally parked cars. She sees nothing changing
9 from today.

10
11 Council Member Kleid stated that there was discussion recently about an easement on the Sea
12 Streets that would have a private gate for those residents. Public Works Director Brazil was not
13 certain if that had been installed, but noted it would be a private easement. The other suggestion
14 was the hours the beach was open and suggested it be from 9:00 a.m. – 6:00 p.m. He agreed with
15 Council President Pro Tem Coniglio that a postponement would only be cosmetic. The Sea
16 streets want no public parking and Clarke Avenue residents do not want it back.

17
18 Mayor McDonald agreed with Council President Pro Tem Coniglio and Council Member Kleid.
19 He stated that the parking was there for fifteen years and needed to return to Clarke Avenue
20 immediately.

21
22 Council President Pro Tem Coniglio voiced a concern about having meters on the streets when
23 residents obtain guest parking permits. Council President Rosow did not want to delay a decision
24 either.

25
26 David Scaff, 159 Sea Spray Avenue, and also represented the Sea Streets Access Association,
27 stated that the argument had been framed well. No resident wants public parking in front of their
28 home. The difference was that Clarke Avenue is a public beach and has been for many years.
29 There have been problems with trespassing and vandalism on the Sea Streets. He noted a
30 neighbor that does have signs, yet still has had criminal activity.

31
32 Council President Pro Tem Coniglio said historically the spaces have been on Clarke.

33
34 **Motion made by Council President Pro Tem Coniglio to, place the seven spaces back on**
35 **Clarke Avenue, with caveat of hours from 9:00 a.m. – 6:00 a.m. and increase enforcement**
36 **efforts, seconded by Council Member Kleid.**

37
38 Council President Rosow directed staff to alternate the metered and permit parking on Clarke
39 Avenue to allow residents to have guest spaces.

40
41 **Council President Pro Tem Coniglio amended her motion to include the alternate metered**
42 **parking. The seconder agreed to the change.**

43
44 Town Manager Elwell indicated to remain in compliance with the State, staff would move the
45 seven spaces to Clarke Avenue, but they will be on Sea Spray for a few weeks. In the budget
46 area, expanding the use of kiosks, in general, around the Town, may increase revenue.

Council Member Wildrick asked if it was possible for staff to go back to the State, plead a hardship and eliminate some of the spaces required. Town Manager Elwell responded that they could write the letter, but asked that they not, since it is honoring the grant program. The State was very clear to the Town that the funds would be discontinued if any changes or non-compliance were made.

Mayor McDonald added that if a letter were to be written, to remind Lt. Governor Jeff Kottkamp that he had offered his assistance to the Town on beach issues.

On roll call, the motion passed 4-1, with Council Member Diamond dissenting.

2. RESOLUTION NO. 93-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Annual Funding Application to the Florida Department of Environmental Protection, Beach Erosion Control Program. [H. Paul Brazil, Director of Public Works]

This item was pulled from Consent agenda by Council Member Diamond. He asked if the money had already been allocated or if it had yet to be paid.

Town Manager Elwell responded that the Town had already committed the money and had been appropriated for the projects that the Town was committed to pursuing in short term. This item was required by DEP to receive state funding assistance.

Motion to approve Resolution No. 93-10 was made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

3. RESOLUTION NO. 84-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$216,329 to Community Asphalt Corporation, for the Annual Roadway Paving and Resurfacing, Establishing a Total Budget of \$250,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements. [H. Paul Brazil, Director of Public Works]

This item was pulled from Consent agenda by Council Member Kleid. He stated that he pulled it with regard to discussing the budget. This was an item for those that want to cut the budget to keep taxes reduced, this is an example of a project that could be postponed if it were reduced or diminished. He brought it up purely as an example.

Co President Pro Tem Coniglio was in agreement with Council Member Kleid and wondered why the project was not being combined with other streets. She also reminded the Town Council that the millage budget was reduced from \$500,000. Town Manager Elwell added that the budget materials that staff was recommending would also be reduced again in FY 11 for re-surfacing. The catch-up done in the last five years does not require as much maintenance going forward. Other sewage updates would require road resurfacing.

Council Member Wildrick stated that he looks at what is nice versus what is necessary. The Town needs to look good and sharp, and employees act in a proper manner. Town sections have not been kept up (Royal Poinciana) and the image of the town is important to its brand. He was hard pressed to be sure that the Town does not let the house not be painted - it would never sell.

Council Member Kleid said he could not have agreed with Council Member Wildrick more.

Council Member Diamond commended Council Member Kleid for bringing this up and noted that everything should be up for consideration. The total budget picture will be seen in the next forty-eight hours. He did not want nor will he vote for any millage rate increase.

Council President Rosow said that this was part of the \$4.5 million deficit. Town Manager Elwell corrected him and said that this project had already been fully funded and budgeted from last year. And for FY 11- for reducing taxes, there was \$250,000 allocated instead of \$500,000.

Council President Rosow read Resolution No. 84-10 by title, as printed above.

Motion to approve Resolution No. 84-10 made by Council Member Kleid and seconded by Council Member Diamond. On roll call, the motion carried unanimously.

B. New Business

1. Consideration of Scheduling an Attorney/Client Session Regarding Christine Brexel v Town of Palm Beach, Case No. 50-2008-CA-012927-XXXX-MB-AA, in the Circuit Court of the Fifteenth Circuit in and for Palm Beach County, Florida, to Discuss this Matter to Begin Immediately Following this Regular Town Council Meeting in the Town Council Chambers, 360 South County Road, Palm Beach, Florida. Attorney/Client Session Attendees: Mayor Jack McDonald, Town Council President David A. Rosow, Town Council President Pro Tem Gail Coniglio, Town Council Members William J. Diamond, Richard M. Kleid, and Robert N. Wildrick, Town Manager Peter B. Elwell, Town Attorney John C. Randolph, Attorney Cristopher S. Rapp, and Court Report from Ley & Marsaa Court Reporters, Inc.[John C. Randolph, Town Attorney]

Town Attorney Randolph requested a closed door session and announced that if approved, the Attorney/Client Session would immediately follow the August 10, 2010, Regular Town Council Meeting. He read the above item into the record.

Motion to schedule the Attorney/Client Session regarding Christine Brexel was made by Council President Pro Tem Coniglio, seconded by Council Member Kleid, to approve scheduling the Attorney/Client Session. On roll call, the motion carried unanimously.

2. Internal Audit Reports. [Robert N. Wildrick, Town Council Member]

a. Human Resources and Pensions

b. Cash and Investments

Council Member Wildrick provided an overview of the Internal Audit Reports relative to the Human Resources Department and Pensions and Cash and Investments. He indicated that today, the first two reports would be released, and in September, the Planning, Zoning and Building Department's (PZB) report would be released.

Mr. Wildrick explained the process of the auditors, and stated that Town management responded in a non-defensive, professional, and open manner. He said he was proud that the Town's management used the audits as a tool to make improvements to the Town.

Deborah Garringer, partner with Crowe Horwath, made several of the following responses to questions and comments by the Town Council and Town Attorney Randolph:

- The audit was tested to look at pension benefits and they performed a sample of recent and long term retirees. Samplings were taken for older retirees and recommendations were made to ensure accuracy.
- The audit recommended focusing on reporting Conflicts of Interest and expanding procedures to bring transparency to the reporting of Conflicts of Interest; the auditors were encompassing all aspects very broadly.

Town Manager Elwell noted that there was a plan in place identified as one of the action items to address reporting Conflict of Interest items by the Town employees' point of view.

Council Member Wildrick explained that management had a certain amount of time to get a process in place, and in the event that issues occur that are not transparent, severe disciplinary action would be taken.

Ms. Garringer continued her responses to the Town Council:

- She agreed with President Pro Tem Coniglio that almost half of the 18 recommendations have already been corrected on premise.

Motion made by Council Member Kleid to accept the Internal Audit Report with only the corrections therein which refer to the Town as a city, which is in several places, that the corrections be made, staff was directed to implement the changes suggested, and that staff report back periodically to the Town Council as to the status of the changes. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

3. Centennial Planning Update.[Jay Boodheshwar, Director of Recreation]

Director of Recreation Jay Boodheshwar provided an overview of the planning of the Centennial celebration. He introduced Bill Bone, Centennial Chairman, to continue the presentation.

Mr. Bone noted that every group in Town would be included toward the effort, and that no money would come from the Town. He presented several questions for feedback. He thanked Mayor McDonald and Council Member Kleid for attending all the meetings and providing input.

Mr. Bone presented the following questions for the Town Council and the Mayor in order to provide direction and/or feedback for the Centennial Commission:

1. Is there a sense among the Town Council that a permanent legacy in the nature of a beautification project was a good thing?
2. Are there any celebration ideas to be explored?
3. How does the Town Council and the Mayor want to officially participate?

Following were several of the responses to Mr. Bone's questions:

President Pro Tem Coniglio said she was in favor of upgrading the Memorial Fountain for a permanent legacy. She asked if there would be any fundraising, and Mr. Bone said that they were not raising any money specifically as a commission. He indicated that the commission sees themselves as coordinators for other organizations that were contributing. Ms. Coniglio noted that relative to participation by the Town Council, less is more, except for the Mayor.

Responding to Mr. Bones, President Rosow indicated that he did not want to see anything built or contributed to the Town that would increase the cost of ongoing maintenance.

Council Member Diamond said that for the Centennial of the Town, he preferred a standalone entity and not just a repair job on something that would need to be done anyway. He added that the greatest monument in the world came to New York City in result of the centennial of the Independence of the United States, which was the Statue of Liberty.

Mayor McDonald said that Mr. Bone is doing an outstanding job in cheering the Centennial. He indicated that there are donors in Town who do not want to give to an existing project but rather give new dollars to something that is new that would represent the centennial itself. Mayor McDonald indicated that Mr. Bone needs feedback today, so that the commission would not waste their time.

Council Member Kleid stated that relative to doing work in Memorial Fountain, the Garden Club has raised sufficient funds to renovate the Fountain. He said that particular project should be left to the Garden Club and there should be more concentrate on new projects.

Council Member Wildrick, indicated that every year the Breakers has a Ferrari show and suggested that the Centennial tie into that and have a parade, along with the new fire engines, shiny police cars, and television stations, as it would help the business community. If it's unique, maybe the local and national news would cover it. Mr. Bones said he agreed entirely and so did the Ku Klux Klan, which is why, he thinks, the Town did not allow parades.

Town Manager Elwell said that if they embraced the idea of a parade, the Town could make it happen as a Town event in the right-of-way. It would take on a different feel of what is strictly regulated in the Town code as far as people or groups that would coordinate parades in the public ways of the Town.

Mr. Bones asked the other Council members, as they were always told that they could not have parades in the Town.

President Pro Tem Coniglio stated that she liked the idea and probably was a very low cost measure. She suggested different groups could participate, such as schools could provide students for singing and playing instruments. She was in favor of the Memorial Fountain and any improvements in the look, feel and community spirit of the Town.

Council Member Kleid said he was in favor of a parade as long as he could drive the Ferrari.

Council Member Diamond said that a parade should not be in lieu of a permanent structure that would commemorate the 100th anniversary.

President Rosow suggested that the legacy project could be to beautify the space between Town Hall and Memorial Park. The former driveway would be made into green space, which the Town would automatically maintain.

Mayor McDonald noted that the Federal Department of Transportation (FDOT) has been delaying the donation of the roadway, between Town Hall and Memorial Park, which may not be resolved before the project would need to begin.

Town Manager Elwell related that the Town has not been given the quit claim deed yet; it is his understanding that the project may not be completed prior to next April.

President Rosow indicated that it was up to the Council to determine whether that space might be an appropriate place to provide a legacy, since it is the Town's hope to control that land.

Responding to Mayor McDonald, Mr. Bones replied that he recognized that FDOT may take a long time; the Commission could have a feeling that this is a good idea and that it would be approved if everything was right by the time the Centennial rolls around.

1 Responding to President Rosow, Town Manager Elwell noted that there was no negative
2 feedback from FDOT, and just involved a process. The Town had very good responsiveness. Mr.
3 Elwell indicated that by the time season arrives, it will not be fenced as it is and would be
4 beautified.

5
6 Town Attorney Randolph advised that before a decision is made, he wanted to
7 review the parade ordinance.

8
9 Responding to President Rosow, Mr. Bone noted that it was their intention to have
10 athletic events, such as, the Centennial tennis player of the year, and the Centennial
11 golfer of the year.

12 **It was the consensus of the Town Council that all were in favor of the legacy**
13 **project.**

14
15 President Rosow announced that the World Health Organization has declared the end of the
16 H1N1 pandemic crisis.

17
18 President Pro Tem Coniglio stated that Bill Bone did not give himself credit for his work. She
19 asked everyone and every citizen to please know that the Centennial Commission would be
20 happy to have help and an application for participation as ambassador for cost sharing is
21 available. She asked to inform others in the condominiums and civic groups to participate with
22 time, talent and treasures.

23
24 4. Preliminary Soil Contamination Assessment and Remediation at Phipps Ocean Park.

- a. RESOLUTION NO. 86-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Kimley-Horn and Associates, Inc., in the Amount of \$32,775 for Contamination Assessment and Remediation Services, Establishing a Preliminary Project Budget of \$37,000 for this Effort, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services.[H. Paul Brazil, Director of Public Works]

25
26 Director of Public Works Paul Brazil provided a PowerPoint presentation of the
27 item. He noted that findings of arsenic, pesticides and other contaminants were
28 found in Phipps Park. It is the Town's sanitary pumping station, with an emergency
29 generator and a fuel tank, which needed replacement according to state mandate.
30 While replacing the tank, a small amount of petroleum contamination was found;
31 this is not unusual and could be cleaned up with the existing budget. At this site, two
32 other compounds, arsenic and a strong pesticide that had not been used in decades,
33 were found that had not been seen anywhere else. He had reported it to Palm Beach
34 County and the Florida Department of Environmental Protection (FDEP), who is
35 managing the fuel tank replacement program for the petroleum related issue. He also
36 notified them with the findings and FDEP requested that the Town find the limit of
37 it; a fence had been installed in order to restrict access of that area. He requested
38 authorization to proceed with FDEP's requirements and to allow further field

investigation based on those results, a cleanup plan would be developed and a preliminary budget would need to be established.

Responding to Council Member Diamond, Mr. Brazil noted that the area is screened and locked, and at his request, a notice could be posted relative to the contamination.

Responding to President Pro Tem Coniglio, Mr. Brazil noted that the area close to the road could not be screened or fenced, and they were working with FDOT to come up with a cleanup plan for it. He indicated that cleanup of what is known today would be approximately \$500,000 to \$600,000.

Council Member Wildrick asked Mr. Brazil to come back in September with a worst case scenario of what the cost could be. Mr. Brazil responded that he would provide updates.

Responding to Council Member Diamond, Town Manager Elwell noted that it was an unforeseen expense of unknown magnitude. It would be an additional budget challenge. Mr. Elwell indicated that the money would begin to come from 2011 and the magnitude would be better defined when this piece of work has been done.

Town Manager Elwell informed Council Member Wildrick that the cost of the project may not be in time for the next formal Town Council meeting, but no significant funds would be spent on any remedial work.

Mr. Brazil indicated that the compounds had been there for a long time.

Town Attorney Randolph read Resolution No. 86-10 by title, as printed above.

Motion made by Council Member Diamond, seconded Council Member Kleid, to approve Resolution No. 86-10. On roll call, the motion carried unanimously.

5. Alternatives for Replacing Storm Drainage Pump Stations and Increasing Greenspace at Lakeside Park.

a. RESOLUTION NO. 87-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$593,000 to Mock, Roos & Associates, Inc., for the D-15 (D-6 and D-7) Pump Station Design and Bid Administrator Services, Establishing a Total Design Phase Budget of \$620,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements. [H. Paul Brazil, Director of Public Works]

Public Works Director Brazil noted that the pump station improvements were part of the accelerated Capital Improvement Program and was a planned renovation to one of the Town's existing storm stations.

1 Responding to Council Member Diamond, Mr. Brazil said that there was only a marginal amount
2 of green space between Alternatives C and D. Mr. Brazil recommended Alternatives C or D, and
3 that the Homeowner's Association favored Alternative D. He explained how two control
4 buildings versus one was not more efficient. He stated that Alternatives C and D still act as two
5 independent stations with their own controls, whether housed in one building or two.

6
7 President Rosow agreed with Mayor McDonald that consolidating into one building would save
8 money in the long term.

9
10 Responding to Council Member Kleid, Mr. Brazil clarified that each station would have its own
11 set of controls, as the information in the backup was not clear.

12
13 Responding to Council Member Diamond, Mr. Brazil indicated that one building housing two
14 control stations would be about one-third larger than housing one station. Space is needed for
15 just moving around, and for having two separate buildings, you would end up with additional
16 square footage.

17
18 Responding to President Pro Tem Coniglio, Mr. Brazil noted that there was no effect with both
19 scenarios on the current shop building. He indicated that having the control stations at that
20 existing structure was considered, but the run back to the pumps was too much of a distance.

21
22 Responding to Council Member Wildrick, Mr. Brazil explained that the "run" was the length of
23 the electrical and signal cables from S1 to the pump. It had been tried once and a very large
24 separation caused liability problems. The gauge of wire needed is extraordinarily expensive. Mr.
25 Wildrick noted that he had a hard time accepting that because the runs here are long and he did
26 not know why if there was an area already designated and screened, why build another one in a
27 public area. Mr. Brazil said they could build what he wanted, and that it would impact the cost of
28 the project. He had concerns regarding liability once a certain distance is surpassed. Mr.
29 Wildrick said that structures should not be added to public parks that are unnecessary. Mr. Brazil
30 indicated that they were getting rid of a larger building and looking at a smaller building.

31
32 Responding to President Pro Tem Coniglio, Mr. Brazil indicated that the size of the shop
33 building could be reduced, but bodies would be displaced and relocation of that effort with the
34 impacts, which was discussed previously. He said that it could be re-evaluated.

35
36 Council Member Wildrick said that adding is not necessary, and that there should be a way to do
37 everything in the shop with exception to the facility.

38
39 Town Manager Elwell suggested that considering the issues that have been raised, it might be
40 best to defer this a month in order to come back with alternatives that have been proposed today.

41
42 **It was the consensus of the Town Council to defer Item XI.B.5.a., to the September 14,**
43 **2010, Town Council Meeting.**

44
6. Evaluation of Town Manager Peter B. Elwell's Performance During 2009-2010. [Peter B. Elwell, Town Manager]

Council Member Diamond read a prepared statement into the record. He suggested separating the two categories for evaluation and scoring each group totally separately to achieve a more accurate rating result for the Town Manager from now on.

Responding to Council Member Diamond, Town Manager Elwell explained that the reason there are two separate items on the Agenda, is that the first is the evaluation of last year's performance, including the three goals that were established one year ago as being high priorities for him to accomplish along with all the general work performance during the course of the year. The second item is the establishment of the new goals, as those were high priorities for him to be conscious of as he does his job for the coming year. Under no circumstances is he being rated for his performance based on the projection of what might happen in the future.

Motion made by Council Member Kleid, seconded by President Pro Tem Coniglio, to accept the Town Manager's evaluation. On roll call, the motion carried unanimously.

7. Adoption of 2010-2011 Goals and Objectives for Town Manager. [Peter B. Elwell, Town Manager]

President Pro Tem Coniglio commented that number three of Goal number one, that she wanted infrastructure to remain; and capital improvement projects to remain ongoing; she stated that she never wants to lose sight of coastal projects. She said she hopes that everyone is in agreement to keep coastal projects at the forefront of their considerations.

Council Member Kleid stated that he was also pleased to see that Town Manager Elwell incorporated it in his goals, although it did not have to be a separate goal and he handled it very effectively.

Motion made by Council Member Kleid to accept the three goals for the Town Manager for coming year. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

XII. ORDINANCES

A. Second Reading

None

B. First Reading

1. ORDINANCE NO. 24-10 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 at Subdivision IV, Section 82-111, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William Hanes, Pension Administrator]

Town Attorney Randolph read Ordinance No. 24-10 by title, as printed above.

Motion to approve on first reading Ordinance No. 24-10 was made by Council President Pro Tem Coniglio, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 25-10 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 at Subdivision III, Firefighters, Section 82-91, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William Hanes, Pension Administrator]

Town Attorney Randolph read Ordinance No. 25-10 by title, as printed above.

Motion to approve on first reading Ordinance No. 25-10 was made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the August 10, 2010, Town Council Meeting was adjourned at 11:23 a.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

1
2
3 _____
4 Joanna Cunningham
5 Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: AUGUST 10, 2010

APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
(BREXEL VS TOWN OF PALM BEACH)

Presenter

Joanna Cunningham, Town Clerk

Supporting Documents

- Minutes of the Special Town Council Meeting held on August 10, 2010

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON TUESDAY, AUGUST 10, 2010**

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order at 11:30 a.m. on Tuesday, August 10, 2010, in the Town Council Chambers. On roll call, all of the elected officials were found to be present, except for Council Member Wildrick.

II. APPROVAL OF AGENDA

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve the Agenda as printed. On roll call, the motion carried 4-0 with Council Member Wildrick absent.

III. CHRISTINE BREXEL V TOWN OF PALM BEACH,

CASE NO. 50-2008-CA-012927-XXXX-MB-AA, IN THE CIRCUIT COURT OF THE FIFTEENTH CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA.

FS 286.011(8) Allows the Mayor, Town Council, and the Town Manager to Meet in a Closed-Door Attorney/Client Session for the Purpose of Discussing Strategy Related to Litigation.

Council President Rosow Announced:

- a.) The Attorney/Client Closed-Door Session
- b.) The estimated time was thirty minutes

c.) The names of the persons attending:

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

Richard M. Kleid, Town Council Member

Robert N. Wildrick, Town Council Member

Cristopher S. Rapp, Attorney

John C. Randolph, Town Attorney

Peter B. Elwell, Town Manager

Ley and Marsaa, Court Reporters

Council Member Wildrick re-entered the meeting.

d.) Persons attending the meeting (listed above) relocate from the Town Hall Council Chambers to the immediately adjacent conference room.

At 11:32 a.m., the attendees relocated into the immediately adjacent conference room.

IV. RECONVENE SPECIAL TOWN COUNCIL MEETING IN THE TOWN HALL COUNCIL CHAMBERS

A.) Call to Order

The Special Town Council meeting was reconvened at 11:45 a.m., in the Town Council Chambers.

B.) Town Council President to Announce the Termination of the Attorney/Client Session.

Council President Rosow announced the termination of the Attorney/Client Session. He stated that the Town Council listened to a report from its Attorney and recommended the settlement offer discussed. Council President Rosow announced that he would accept a motion to accept the advice of the Attorney to settle case in amount indicated.

Motion to accept the settlement offer was made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further Business, the Special Town Council meeting of Tuesday, August 10, 2010, was adjourned at 11:45 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: AUGUST 11, 2010

APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

Presenter

Joanna Cunningham, Town Clerk

Supporting Documents

- Minutes of the Regular Town Council Meeting held on August 11, 2010

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON WEDNESDAY, AUGUST 11, 2010**

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, August 11, 2010, at 9:30 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 Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald commented that today the Town Council would consider Publix' application to build a new store. The application is brought to the Town Council by the applicant without an Architectural Commission's (ARCOM) recommendation. The application will be considered by five members who are not architects or land planners with no prior service on ARCOM. They will make variance decisions that will affect the size and appearance of the structure without the benefit of an advisory commission recommendation, and that is disappointing. He is certain that a larger and modern store will bring additional non-residents and traffic to Town and the proposed store will be out of scale with the neighborhood. If the Town is able to accept these negatives, then the resulting structure must be an architectural jewel, not a building that achieves basic standards. Publix has been a positive presence and a good community citizen while operating in an essential and highly profitable business for many years. We have been fortunate to have them as our corner grocery store, and they are fortunate to be located in a unique and world famous Town. I hope they recognize the value of being the exclusive grocery store in Town. We are pleased to have Publix here and the residents want Publix here with a modern store, better service and selection. I hope Publix appreciates the high regard our residents have for them and reciprocate with a structure that enhances one of the most beautiful towns in the United States, one we can take pride in, Publix can be proud of, and one ARCOM can zealously recommend. I think former Mayor Marix in her recent letter to the *Palm Beach Daily News* expressed persuasively the positives and need for action. However, this compromise must be beneficial to all concerned. This Council has the duty to decide what is best for all the residents, not just those who shop at Publix. Let the Council grant the variances the applicant qualifies for,

1 accept the elimination of a third loading dock and an enlarged sign. Who in Palm Beach needs a
2 larger sign to find Publix? Thank you.

3
4 IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

5 Council Member Wildrick commented on behalf of Alan Goldboro, chairman of the Planning
6 and Zoning Commission, as he could not attend today's meeting. Mr. Goldboro's comment
7 related to his disappointment that ARCOM had not adhered to their architectural piece, and
8 consequently moved into the Planning & Zoning area, which was not their area. He noted that
9 Mr. Goldboro said some of ARCOM's activities have been grossly inappropriate. The Planning
10 and Zoning Commission and Mr. Goldboro's opinion was that any Planning and Zoning
11 differences should be recommended to Town Council and that ARCOM should adhere to
12 architecture. Mr. Wildrick indicated that Town Attorney Randolph advised ARCOM on more
13 than one occasion to follow the charter. Mr. Wildrick said that a lot of time had been wasted of
14 the Town and Publix by delving off into other areas.

15
16 Council Member Diamond stated that he wanted to know what would happen if Publix'
17 variances were not granted.

18
19 Responding to Council Member Diamond, President Rosow said that they would discuss it at the
20 appropriate time.

21 V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

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

22
23 There were none.

24 VI. APPROVAL OF AGENDA

25
26 The following changes were made to the Agenda:

27
28 **WITHDRAWN:** Item VIII.C.2.a., Special Exception #15-2010

29
30 **ADDED:** Item VIII.C.4., Consideration of ratifying the decision of yesterday's
31 settlement agreement at the Attorney/Client Session regarding Christine Brexel v Town
32 of Palm Beach, Case No. 50-2008-CA-012927-XXXX-MB-AA.

33
34 **Motion made by Council Member Diamond, seconded by Council Member Kleid, to**
35 **approve the Agenda as amended. On roll call, the motion carried unanimously.**

36 VII. ORDINANCES

37 A. Second Reading

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1. ORDINANCE NO. 3-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Text of the Infrastructure Element (Section VI) of the Town of Palm Beach Comprehensive Plan as Last Amended on April 15, 2009 with the Adoption of Ordinance No. 6-09, by Amending Policy 12.3 to Include a 10-Year Water Supply Facility Work Plan, Pursuant to Chapter 163.3177(6)(C), Florida Statutes (Water Supply Planning Requirements); Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing an Effective Date.[John S. Page, Director of Planning, Zoning and Building]

Town Attorney Randolph read Ordinance No. 3-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to adopt Ordinance No. 3-10. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 23-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-36 to Change the Use of the Term Building Official to Director of Planning, Zoning and Building and to Add a Provision Which Allows the Town Council to Waive Certain Zoning Provisions in Chapter 134 for a Town Event, Public Rights-of-Way, Town Building, Town Structure or Town Property Provided Certain Conditions are Met; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[John S. Page, Director of Planning, Zoning and Building]

Town Attorney Randolph read Ordinance No. 23-10 by title, as printed above.

President Pro Tem Coniglio expressed that the change in the term of Building Official to Director of Planning, Zoning and Building was de minimis and should be done. However, the remaining portion was done with respect to banners and may be too broad.

Planning, Zoning and Building Director John Page noted that the Palm Beach Civic Association proposed placing banners along streetlight posts on public property and rights-of-way for the Centennial celebration. At present time, the zoning ordinance disallows it. The Planning, Zoning and Building Department (PZB) designed a provision that would allow the Town Council to waive a zoning requirement on a case by case basis, if there was a super majority vote to waive the requirement.

President Pro Tem Coniglio said that the Town should react the same way with an application as required by anyone else. She also indicated that her preference would be to work together, as the banners have been well received both by the Council and the community.

1 Council Member Wildrick agreed with President Pro Tem Coniglio, and that the Ordinance was
2 too far reaching and maybe unnecessary. The Town Council should consider looking at the
3 Ordinance again.

4
5 Town Attorney Randolph said if the sense of the Council was not to delay it, he suggested that it
6 could be amended to only deal with banners.

7
8 Council Member Diamond indicated that a letter from the Royal Park Homeowners Association
9 indicated that the Planning and Zoning Commission's approval may not have been thoroughly
10 considered plus it is said to have been given despite unidentified reservations on the part of
11 Town Attorney Randolph, who was not present at the meeting.

12
13 Responding to Council Member Diamond, Town Attorney Randolph said that his reservation
14 was the same concerns mentioned by two of the Council members.

15
16 President Rosow asked if it was the consensus of the Town Council to remove language from the
17 Ordinance, as it was overreaching.

18
19 Town Attorney Randolph suggested that in Section 1, Section 134-36(b) the language should be
20 amended as:

21
22 (b) The town council shall have the power to waive zoning provisions in Chapter 134 regulating
23 the use of public rights-of-way to allow town sponsored events; and from the lot yard and bulk
24 requirements for town buildings, town structures or town property, provided that the waiver is
25 consistent with the town's comprehensive plan and the permitted uses allowed in the zoning
26 district and further, that there is a favorable vote to grant the waiver by four members of the town
27 council at a regularly scheduled town council meeting.

28
29 In addition, Town Attorney Randolph indicated that he would need to change the title if the
30 Town Council was in agreement to the change.

31
32 Town Attorney Randolph read the change of the title as:

33
34 ORDINANCE NO. 23-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm
35 Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-36 to Change the Use of
36 the Term Building Official to Director of Planning, Zoning and Building and to Add a Provision
37 Which Allows the Town Council to Waive Certain Zoning Provisions in Chapter 134 Regulating
38 the Use of Public Rights-of-Way to Allow Town Sponsored Events, Provided Certain Conditions
39 are Met; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing
40 an Effective Date.[John S. Page, Director of Planning, Zoning and Building]

41
42 **Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to**
43 **approve on first reading Ordinance No. 23-10, as amended. On roll call, the motion carried**
44 **unanimously.**

VIII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business - Less than 15 Minutes

None

2. New Business - Less than 15 Minutes

- a. SPECIAL EXCEPTION #15-2010 The application of 2875 Investors LLC; relative to property commonly known as 2875 South Ocean Blvd.; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a Special Exception to permit the operation of a 4,004 square foot full service bank in the C-TS Zoning District and a Special Exception request to permit operation of 3 existing drive-thru lanes in support of bank use. [Attorney: Alfred J. Malefatto]

Item VIII.C.2.a., has been withdrawn.

- b. VARIANCE #13-2010 The application of Andres B. Fanjul and Catherine A. Fanjul; relative to property commonly known as 109 Wells Road; described as Lot 2, LINDA VISTA; located in the R-B Zoning District. The applicant is requesting a variance to allow an unenclosed accessory structure to be constructed 5 feet from the side property line in lieu of the 10 foot minimum setback required. [Attorney: Peter S. Broberg]

President Pro Tem Coniglio said that she would gain or lose nothing on the Variance, but would recuse herself based on public perception. She provided form 8b to Town Clerk Cunningham and left the dais.

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

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

Attorney Peter Broberg, on behalf of Andres and Catherine Fanjul, provided an overview of the request.

1
2 Planning, Zoning and Building Director Page commented that staff had no outstanding concern
3 with the proposal.

4
5 Responding to President Rosow, Attorney Broberg noted that the hardship was that the house
6 was purchased as is and that the applicant did not construct the hardscape, the house, or the pool.
7 It was proposed in order to provide privacy and was the only place where it would fit.

8
9 **Motion made by Council Member Diamond, seconded by Council Member Wildrick, to**
10 **approve Variance #14-2010, and found, in support thereof, that all of the criteria**
11 **applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been**
12 **met.**

13
14 Attorney Broberg noted that it was Variance #13-2010, rather than Variance #14-2010.

15
16 **The maker and seconder agreed.**

17
18 **Amended motion made by Council Member Diamond, seconded by Council Member**
19 **Wildrick, to approve Variance #13-2010, found, in support thereof, that all of the criteria**
20 **applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been**
21 **met. On roll call, the motion carried 4-0, with President Pro Tem Coniglio recused.**
22

23
24 c. VARIANCE #14-2010 The application of South Ocean Boulevard, LLC, Thomas C.
25 Iskalis, President; relative to property commonly known as 126 South Ocean Blvd.;
26 described as Lengthy Legal Description on File; located in the R-B Zoning District. The
27 applicant is requesting a variance from the provisions of Section 62-38, 62-39 and Section
28 134-1701 which do not allow construction east of the bulkhead line. The variance is
29 proposed to allow construction of a sheet pile toe wall 22 feet east of the Town's bulkhead
30 line in order to protect the existing bulkhead. [Attorney: Raymond W. Royce]

31
32 Ex-parte communication was declared by:

- 33 • Council Member Diamond spoke with Attorney Raymond Royce, who advocated the
34 position of his client.
- 35 • Council Member Kleid spoke with Attorney Royce.
- 36 • President Rosow stated that Attorney Royce sent him a letter.
- 37 • President Pro Tem Coniglio received a letter and spoke to Attorney Royce as well.

38
39 President Pro Tem Coniglio suggested that Variances #14-2010 and #15-2010 be presented
40 together, as they mirrored one another.

1 Attorney Royce provided a PowerPoint presentation of the applicant's request. He noted that the
2 hardship was that the property could be eroded away or the yard and home damaged. It is the
3 minimum variance, and that it was a unique situation.

4
5 President Rosow disclosed that Ron Dixon has been his coastal engineer with respect to docks
6 and seawalls.

7
8 Responding to President Rosow, Attorney Royce noted that there were no similar structures on
9 the south side of Clarke Beach which has eroded away and in the north he did not think that there
10 was a seawall immediately adjacent.

11
12 Ron Dixon, Dixon and Associates Engineers of West Palm Beach, provided further information
13 regarding the seawalls in the adjacent area. He indicated that the purpose of the toe wall would
14 be protection of the facilities from further erosion.

15
16 Town Clerk Cunningham administered the oath to Zoning Administrator Paul Castro who would
17 be providing testimony.

18
19 Staff comments:

20
21 Zoning Administrator Castro indicated that the purpose of the sheet pile and the toe wall is to
22 protect the existing seawall from wave continuation. The reason for the Variance is that the code
23 did not allow for construction east of the Town's official bulkhead line.

24
25 Responding to President Pro Tem Coniglio, Attorney Royce responded that he had approval
26 from the Florida Department of Environmental Protection (FDEP); he said that the Breakers had
27 no objection to the Variance.

28
29 Responding to President Pro Tem Coniglio, Public Works Director Paul
30 Brazil saw no additional scouring that would impact the north and south
31 properties.

32
33 **Motion made by President Pro Tem Coniglio that Variance #14-2010 be granted and**
34 **found, in support thereof, that all of the criteria applicable to this application as set forth in**
35 **Section 134-201(a), items 1 through 7, had been met. Council Member Diamond seconded**
36 **the motion. On roll call, the motion carried unanimously.**

37
38 d. VARIANCE #15-2010 The application of Flagler Drive Holdings, LLC, Thomas C.
39 Iskalis; relative to property commonly known as 115 Flagler Drive; described as Lengthy
Legal Description on File; located in the R-B Zoning District. The applicant is requesting a
variance from the provisions of Section 62-38, 62-39 and Section 134-1701 which do not
allow construction east of the bulkhead line. The variance is proposed to allow construction
of a sheet pile toe wall 22 feet east of the Town's bulkhead line in order to protect the
existing bulkhead. [Attorney: Raymond W. Royce]

38
39 Please see above discussion as it was presented with this Variance.

1
2 **Motion made by President Pro Tem Coniglio that Variance #15-2010, be granted and**
3 **found, in support thereof, that all of the criteria applicable to this application as set forth in**
4 **Section 134-201(a), items 1 through 7, had been met. Council Member Diamond seconded**
5 **the motion. On roll call, the motion carried unanimously.**
6

7
3. Old Business - More than 15 Minutes

- a. MODIFIED SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc. and Sunset Avenue Corp.; relative to property commonly known as 265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting Site Plan Review and Special Exception to construct a 53,272 (44,018 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 201 off-street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage will be within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen as equipment on the roof. Part of the proposed design is to have two generators located on the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the proposed grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is town serving. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 257'-5" feet in lieu of the 150 foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 6'7" feet in lieu of the 10 foot minimum required based on building height; (c) to allow a side yard setback of 3'9" feet in lieu of the 10 foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a total square footage of 53,272 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow a rear yard setback of 14'2" in lieu of the 15 foot minimum required; (g) to allow an architectural tower to be on the entry façade that is not permitted by Code; (h) to allow the height of the business identification sign to be 22 feet in lieu of the 15 foot maximum allowed; (i) to allow the height of the proposed one story grocery store to be 25 feet in lieu of the 15 foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to 36 feet in lieu of the 20 foot maximum allowed; (k) to allow 201 parking spaces in lieu of the 220 required (a deficit of 19 parking spaces); (l) to allow a 4 parking spaces with a depth of 17'6" in lieu of the 18 feet minimum required. [Attorney: Maura A. Ziska, Esq.] [ARCOM Recommendation: Defer to the August 25, 2010, ARCOM meeting.] Deferred from the May 12, 2010, June 22, 2010, and July 14, 2010, Town Council Meetings (Special Circumstances).

8
9 President Rosow commented that the Town Council was not here to review the architecture, only
10 the special exceptions and the variances.

Ex-parte communication was declared by:

- Council Member Diamond met with members of the Publix Corporation and Attorney Maura Ziska.
- Council Member Kleid had conversations with Attorney Ziska, representatives of Publix and received many emails and letters with respect to the Publix application.
- President Rosow had conversations with Publix going back to the charettes, and met with them Monday, August 9, 2010, along with Attorney Ziska; he had the same emails from residents that most of the Town Council has received and several phone calls from residents, both pro and con.
- President Pro Tem Coniglio met with Attorney Ziska, representatives of Publix, had numerous conversations with Hank Forshay(ph) on behalf of Publix and conversations with residents, both pro and con and emails that all have received.
- Council Member Wildrick received letters and phone calls from residents, both pro and con; he talked with Attorney Ziska on the phone and met with Attorney Ziska and Publix representatives.

Attorney Ziska provided an overview of the request.

Responding to President Rosow, Architect Brian Fisher, Fisher Architects, explained that the height of the sign on the new building was approximately the same as the sign on the existing building.

Attorney Ziska continued with her presentation while discussing the list of variances a-l.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- The original site plan showed that the internal deliveries would be on site from Sunset Avenue driving through the property, and prior to getting back on to Sunrise Avenue backing up into a loading dock area with access from the rear of the property.
- In compromising with the Palm Beach Hotel and their concerns relative to the times of the deliveries, the headlights, and the noise, the site was redesigned to move the building further back to the east and north within the site.
- The site originally had all of its required parking at 90 degrees, but in the redesign and relative to concern about mixing one-way with two-way traffic, the parking lot was redesigned with angled parking, which precipitated the need for the variance for the 19 parking spaces, as shown on the existing plan.

- 1
- 2 • The site plan shows all of the mechanical equipment being totally enclosed, including the
- 3 trash compactor, along with a 500 kilowatt generator and a 100 kilowatt generator for
- 4 backup.
- 5
- 6 • The store size had been dictated by architectural details, the arcade to the north and west
- 7 side, the front side of the store, as well as enclosing the mechanical equipment as
- 8 identified by Attorney Ziska.
- 9
- 10 • Garrett Klotz, American Consulting Engineers, reviewed the internal design of the
- 11 parking lot, and reported that there were no traffic conflicts.
- 12
- 13 • All of the concurrency requirements have been met, which was adequate capacity for
- 14 roadway, water, sewer, potable water, and trash refuse.
- 15
- 16 • One concern staff has with the site plan was internal deliveries, as Publix has been vague
- 17 as to when the deliveries would occur, especially the big semi-truck deliveries.
- 18
- 19 • Another concern was the construction timeline and staff recommended that they come
- 20 back at a later date with a Construction Management Agreement.
- 21
- 22 • Mr. Klotz was here today to address any parking and traffic issues.
- 23
- 24 • The Police Department had no concerns with early morning hour deliveries, as it is
- 25 currently.
- 26
- 27 • The hardships were spoken to relative to the variances.
- 28

29 Discussion occurred among the Town Council, Attorney Ziska, Zoning Administrator Castro,
30 and Mr. Klotz regarding the truck deliveries, extended construction hours, and 90 degree parking
31 versus angled parking. Mr. Klotz commented that he agreed with Mr. Castro that the angled
32 parking caused a possible loss of up to 19 spaces. Attorney Ziska stated that Publix could design
33 90 degree parking, for 222 spaces versus 201 without a variance, and that their preference was
34 angled parking.

35
36 Public Comment:

37
38 Town Clerk Cunningham administered the oath to Attorney Jeffrey A. Rembaum who would be
39 providing testimony.

40
41 Attorney Rembaum, Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., representing the Palm
42 Beach Hotel Condominium Association, spoke in opposition to the approval and listed the
43 Association's reasons. He submitted documents into the record (Exhibits 1 and 2) that supported
44 their issues.

1 Dan Ionescu, owner and part time resident of the Palm Beach Hotel, spoke in opposition to the
2 approval. He submitted a copy of his document into the record.

3
4 Ned Barnes, Palm Beach Civic Association, stated that the Association conducted several
5 surveys on Town issues. He noted that 77% of their survey supported a new, larger Publix.

6
7 Carole Spilberg, Palm Beach Hotel resident for 10 years, commented regarding her parking
8 concerns and indicated that she needed a permit.

9
10 Responding to Council Member Diamond, when asked if she could stay longer in Palm Beach if
11 she had permit parking, Ms. Spilberg said "absolutely".

12
13 President Rosow informed Ms. Spilberg that the Palm Beach Hotel had parking and sold it.

14
15 Discussion occurred among the Town Council and Mr. Rayburn, Director of Asset Management,
16 Real Estate for Publix Supermarkets, Inc., regarding several of the following comments that were
17 made:

- 18
19 • Publix would find a temporary space in order to provide a small market in the interim.
20
21 • If the variances were not approved and Publix had to stay with the current space, Publix
22 would have to consider what their options were, as the store was 40 years old and did not
23 meet Publix standards.
24
25 • Mr. Rayburn indicated that Publix did not have control over available space for a
26 temporary market; Publix was doing everything possible to accommodate a temporary
27 store.
28
29 • Publix wanted to be open for Christmas next year, and that they needed approval from
30 ARCOM and Town Council by the end of September in order to stay on schedule.
31

32 President Pro Tem Coniglio provided her list of concerns, and made several of the following
33 comments:

- 34
35 • The community has said that the new Publix is too large, and requested a 10% reduction.
36
37 • Regarding parking and the variances, there are 12 weeks a year that there are a large
38 number of residents and shoppers.
39
40 • The hours of operation will remain as it is and not increase to a 24-hour store.
41
42 • Valet parking will continue.
43
44 • Trash will be on Sunset Avenue.
45

- 1 • Construction Management Plan is needed including conditions relative to it.
- 2
- 3 • Construction timeline, agreement on equipment, security and a “penalty fee” situation if
- 4 not completed as promised.
- 5
- 6 • Publix would provide a small market on the island in the interim.
- 7
- 8 • The Publix sign, etched in stone and not lighted.
- 9
- 10 • A north and south signage is not necessary.
- 11
- 12 • Restriction of hours of delivery for the semi-trucks.
- 13
- 14 • Concurrency is needed within roads, streets, and sewers.
- 15
- 16 • Paul Castro commented that reserve trips could not be reserved and each application
- 17 would have to demonstrate adequate roadway capacity within all segments and
- 18 intersections to expand and redevelop.
- 19
- 20 • Several comments from residents were provided regarding the outside appearance.
- 21
- 22 • A generator would be needed, and more organic and healthier foods.
- 23

24 Council Member Wildrick noted that President Pro Tem Coniglio stated his thoughts, as well. He
25 provided his views on the Town and stressed the importance of maintenance and upkeep of the
26 Town; he added that the Town has not learned to collaborate in order to make improvements. He
27 also noted that he was proud of staff, Mr. Page, and Mr. Castro of how they help the citizens; he
28 also mentioned the Police Department and how they wave and make the people feel good in
29 Town. This is what makes Palm Beach different and unique. He said he hopes that ARCOM, in
30 particular, can be more user friendly as they were giving the town a bad reputation. He will
31 consider how they treat people when they are up for reappointment.

32
33 President Rosow explained that the Town Council would go through each individual variance.
34 He noted that President Pro Tem Coniglio came up with a very good list of items that should be a
35 part of the vote. He wanted to make this a condition precedent for the first vote and therefore a
36 condition precedent for all the votes. Following is the list of conditions to the Variances the
37 Town Council would address:

- 38
- 39 • Construction Management Agreement
- 40 • Construction Timeline
- 41 • A time schedule for truck deliveries in order to avoid conflicts with residential traffic
- 42 • Hours of operation
- 43 • Valet service
- 44 • A temporary store
- 45 • The Publix new sign would not be lit, but would be recessed in stone

- Signage on the north and south side
- Trash only on Sunset Avenue

Responding to President Rosow, Attorney Ziska indicated that regarding a temporary store, it would be difficult to make that a condition without knowing what the future holds. However, she said that they would make their best effort to provide one.

Discussion occurred among the Town Council, Town Attorney Randolph, Planning, Zoning and Building Director Page, Zoning Administrator Castro, and Nick Abiusi, manager of Publix on Sunrise Avenue. Following were several of the issues discussed:

- Provisions for a temporary store
- A Declaration of Use Agreement
- PZB staff to provide the policing of the best efforts to provide a temporary store
- Hours of operation of the store
- Delivery schedule not to be from 4:00 p.m. to 8:00 p.m. in the evening
- If project approved, staff would bring the Construction Management Agreement and Declaration of Use Agreement back to the Council next month

The following variances were requested to construct the proposed one story grocery store:

- a. To allow a building length of 257'-5" in lieu of the 150' maximum allowed.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing a building length of 257'-5". On roll call, the motion carried unanimously.

- b. To allow a front yard setback at the northwest corner of the proposed building of 6'7" in lieu of the 10' minimum required based on building height.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing a front yard setback of 6'7". On roll call, the motion carried unanimously.

- c. To allow a side yard setback of 3'9" in lieu of the 10' minimum required.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing a side yard setback of 3'9". On roll call, the motion carried unanimously.

- d. To allow two loading spaces in lieu of the three spaces required by code.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing two loading spaces in lieu of three spaces required. On roll call, the motion carried unanimously.

1 e. To allow the proposed building to be a total square footage of 53,272 square feet in lieu of the
2 15,000 square foot maximum allowed.

3
4 **Motion made by Council Member Kleid, seconded by Council Member Diamond, to**
5 **approve the Variance allowing the proposed building to be a total square footage of 53,272**
6 **square feet in lieu of the 15,000 square foot maximum allowed. On roll call, the motion**
7 **carried unanimously.**

8
9 f. To allow a rear yard setback of 14'2" in lieu of the 15' minimum required.

10
11 **Motion made by Council Member Kleid, seconded by Council Member Diamond, to**
12 **approve the Variance allowing a rear yard setback of 14'2" in lieu of the 15' minimum**
13 **required. On roll call, the motion carried unanimously.**

14
15 g. To allow an architectural tower to be on the entry facade that is not permitted by Code;

16
17 **Motion made by Council Member Kleid, seconded by Council Member Diamond, to**
18 **approve the Variance allowing an architectural tower to be on the entry facade that is not**
19 **permitted by Code. On roll call, the motion carried unanimously.**

20
21 h. To allow the height of the business identification sign to be 22' in lieu of the 15' maximum
22 allowed.

23
24 **Motion made by Council Member Kleid, seconded by Council Member Diamond, to**
25 **approve the Variance allowing the height of the business identification sign to be 22' in lieu**
26 **of the 15' maximum allowed. On roll call, the motion carried unanimously.**

27
28 i. To allow the height of the proposed one story grocery store to be 25' in lieu of the
29 15' maximum allowed.

30
31 **Motion made by Council Member Kleid, seconded by Council Member Diamond, to**
32 **approve the Variance allowing the height of the proposed one story grocery store to be 25'**
33 **in lieu of the 15' maximum allowed. On roll call, the motion carried unanimously.**

34
35 j. To allow the overall height of the proposed one story grocery store to be 36'6" in lieu of the 20'
36 maximum allowed.

37
38 **Motion made by Council Member Kleid, seconded by Council Member Diamond, to**
39 **approve the Variance allowing the overall height of the proposed one story grocery store to**
40 **be 36'6" in lieu of the 20' maximum allowed. On roll call, the motion carried unanimously.**

41
42 k. To allow 201 parking spaces in lieu of the 220 required (a deficit of 19 parking spaces).

43
44 **Motion made by Council Member Kleid, seconded by Council Member Diamond, to**
45 **approve the Variance with the condition of allowing 215 parking spaces in lieu of the 220**
46 **required, that said parking spaces be 90 degrees and have two lane rows.**

Discussion occurred among the Town Council, Planning, Zoning and Building Director Page, and Zoning Administrator Castro regarding the number of parking spaces. President Rosow suggested approving a Variance for 215 parking spaces in lieu of 220, and Town Council would be in favor of obtaining more than that if possible.

Upon roll call, the motion carried unanimously.

1. To allow four parking spaces with a depth of 17'6" in lieu of the 18' minimum required.

Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to approve the Variance allowing four parking spaces with a depth of 17'6" in lieu of the 18' minimum required. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond that the Variances of Modified Site Plan Review #4-2010 with Special Exception and Variances be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met.

President Rosow asked that Council Member Diamond amend his motion to include the nine conditions of the Town Council, including the 90 degree parking.

The maker agreed.

Amended motion made by Council Member Diamond that the Variances of Modified Site Plan Review #4-2010 with Special Exception and Variances be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been met, subject to the nine conditions of the Town Council and the 90 degree parking. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond that the Special Exception of Modified Site Plan Review #4-2010 with Special Exception and Variances shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met, with conditions and 90 degree parking set forth in the previous motion. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

President Rosow indicated that ARCOM would determine the appearance of the building and staff would work on bringing the Declaration of Use Agreement and Construction Management Agreement back to the Council at the same time.

Motion made by President Pro Tem Coniglio to defer the Site Plan Review of the Modified Site Plan Review #4-2010 with Special Exception and Variances until it had been reviewed by Town staff and brought back to Town Council at the September 15, 2010, Town Council

1 **Meeting. Council Member Diamond seconded the motion. On roll call, the motion carried**
2 **unanimously.**

3
4 President Pro Tem Coniglio noted that she would like to give clear direction from the Council to
5 ARCOM that ARCOM take consideration that this needs to move forward in an expeditious
6 manner; that Council is looking toward the September Town Council meeting for the second Site
7 Plan Review, and that it appears that ARCOM is very close and that the Town Council could put
8 an umbrella blessing on it.

9
10 Council Member Kleid indicated that President Pro Tem Coniglio stated very concisely that the
11 Town Council would like to see the project moving forward and that the suggested details
12 seemed to be acceptable to Publix.

13
14 Council Member Wildrick stated that ARCOM is extraordinarily talented, but collaboration is
15 needed and that ARCOM would need to move forward, now that decisions have been made.
16 ARCOM should be the leader and not be the most obstructionist group in Town.

17
18 4. New Business - More than 15 Minutes

19 There were none.

20
21 D. Other

22 a. Ratifying Settlement Agreement of yesterday's Attorney/Client Session Regarding
23 Christine Brexel v Town of Palm Beach, Case No. 50-2008-CA-012927-XXXX-MB-AA

24 Town Attorney Randolph requested that Town Council authorize and make part of the record,
25 the specific terms of the settlement, which was incorporated into the document provided.

26 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to**
27 **approve the ratification of the Settlement Agreement regarding Christine Brexel v Town of**
28 **Palm Beach, Case No. 50-2008-CA-012927-XXXX-MB-AA. On roll call, the motion carried**
29 **unanimously.**

30
31 IX. ANY OTHER MATTERS

32 There were none.

1
2
3 X. ADJOURNMENT

4 There being no further business, the August 11, 2010, Town Council Meeting was adjourned at
5 12:11 p.m.
6

7 APPROVED:
8
9

10
11
12 _____
13 David A. Rosow
14 Town Council President

15 ATTEST:
16
17
18

19
20 _____
21 Joanna Cunningham
22
23
24

25 Development Review Applications & Plans

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: AUGUST 12, 2010

APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
(BUDGET)

Presenter

Joanna Cunningham, Town Clerk

Supporting Documents

- Minutes of the Special Town Council Meeting held on August 12, 2010

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON THURSDAY, AUGUST 12, 2010**

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order at 1:00 p.m. on Thursday, August 12, 2010, in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. PLEDGE OF ALLEGIANCE

Council President Rosow led the pledge of allegiance.

Prior to approval of the Agenda, Council President Pro Tem Coniglio requested that there be Communications from Citizens. It was the consensus of the Town Council Members to allow public comment. Council President Rosow added that there could be no discussion of salaries or benefits due to union negotiations and at the advice of the Town Attorney.

III. PUBLIC COMMENTS

Patrick Cooper, 261 Sanford Ave., Member of the Civic Association, opposed any tax increase and elimination of Ocean Rescue.

David Scaff, 159 Seaspray Ave. suggested increasing the revenues by increasing the parking fees along the beaches.

Jerry Falconer, United States Lifesaving Assoc. (USLA), spoke on the importance of lifeguards and provided informational packets to the Town Council Members.

Lisa Rowen, 130 Chilean Ave., spoke in support of keeping the lifeguards. She questioned the timing of the meetings. Council President Pro Tem Coniglio explained that the State Statute dictates the timing of the budget meetings.

Minnie Pulitzer-McCluskey, north end resident for over 50 years, stated that what makes the Town special is the uniqueness. She was opposed to eliminating the lifeguards.

Danielle Hickox-Moore, Pendleton Ave, Chair of the Palm Beach Recreation Commission, was opposed to privatization of the recreation department.

Frances Amore, 149 Chilean Ave., stated that her family has lived in Palm Beach for over 60 years. The ocean is the crown jewel of Palm Beach. She was opposed to eliminating the life guards. Council President Pro Tem Coniglio asked her and the audience, if they keep the lifeguards, were they willing to have a small tax increase. She responded that she personally would.

Greg Batton, a contractor in Town, 8077 Man O' War, Palm Beach Gardens, spoke about the building department and the increase in fees and reminded them of the State Statute. Council President Rosow indicated that the Town was in full compliance and charged the fees accordingly.

Steve Barnes, 203 Westminster Rd., West Palm Beach, lifeguard supervisor and water safety instructor, was opposed to elimination of the lifeguards.

Jennifer Massing, 150 Australian Ave., spoke in opposition to the elimination of the lifeguards. She stated that there was no price on human life and the lifeguards were heroes just like the police and fire fighters.

IV. APPROVAL OF AGENDA

Motion to approve the Agenda as Amended was made by Council Member Kleid, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

V. CONTINUED CONSIDERATION OF PROPOSED FY11 BUDGET

A. TOWN MANAGER'S RECOMMENDATION FOR ACHIEVING TOWN COUNCIL'S GOAL OF MAINTAINING A LEVEL MILLAGE RATE FROM FY10 TO FY11. [PETER B. ELWELL, TOWN MANAGER]

Town Manager Elwell presented his item and the challenges the Town faces, including his recommendation for the elimination of the Ocean Rescue unit. He provided a history of the previous budget meetings held and at the July, 13, 2010 Town Council Meeting he was directed by the Town Council to return with a proposal that did not increase taxes and eliminate \$4.5 million dollars from the budget.

He continued that circumstances had changed during the process with the substantial decrease in property values and that the coming years do not look much better. There were short term immediate recommendations for FY 2011, but stressed that this was the first year of a very long process that may have more serious cuts.

Town Manager Elwell announced that the individual who held the Administrative Lieutenant position recommended for elimination has chosen to retire and therefore the Town would no longer require the layoff of a firefighter. The other recommendations still stood.

B. CONTINUED DISCUSSION AND TOWN COUNCIL DIRECTION REGARDING CHANGES TO FY11 PROPOSED BUDGET PRIOR TO BUDGET ADOPTION IN SEPTEMBER. [MAYOR AND TOWN COUNCIL]

Council President Rosow thanked the staff for the work they did in preparing the revised budget and directed everyone to the Proposed Budget Reductions on pages 14-15 of the back-up materials.

Council Member Wildrick commented that the easiest thing for those in office was to raise taxes, was very cowardly, and what has gotten government in a pickle. The second easiest thing to do in government was to only think five minutes ahead. It is nice and easy to be everyone's buddy and give them what they want, but it is cowardly. The budget process always depends on whose ox is getting gored.

He stated that even in good times, people would not get as much as they want, and in bad times things need to be cut. He noted that times are not good now, and would not get much better anytime soon. The Town Council's primary responsibility was to the tax payer. Council Member Wildrick stated that he was against tax increases and was also opposed to layoffs. He was for more efficient government. A government's objective should be to provide basic services for everyone, not special services for some people. Basic services are sanitation, water and security. He felt that lifeguards fell into the safety and security category. There has to be a more efficient way of doing things and do what is necessary and not what is nice. He asks himself if it was nice or necessary when it comes to sanitation, sewer, water and safety. Staff was creative with very few layoffs, and if there were layoffs, they should get the first choice of any job in the Town. He again stated he was opposed to any tax increases.

The Town Council went down the list of suggested budget reductions and voted on each item:

Motion to accept the Legislative Budget Reductions was made by Council Member Diamond, and seconded by Council Member Kleid. On roll call, the motion carried unanimously.

Motion to accept the General Government Budget Reductions that included eliminating the holiday tree at Bradley Park, Employee Events, and the Fourth of July funding was made by Council Member Diamond.

Council President Pro Tem Coniglio discussed the elimination of Citizens Academies. She felt that if all of the costs were covered privately, they should continue. Town Manager Elwell felt that there may be individuals or organizations in the community that would fund the program.

Council Member Diamond amended his motion to include the continuance of the academies at no additional cost to the budget.

1 Town Manager Elwell clarified that the motion should mena that no in-kind costs as well as the
2 out of pocket costs.

3
4 **The amended motion was seconded by Council Member Wildrick. On roll call, the motion**
5 **carried unanimously.**

6
7 **Motion to eliminate a proposed Executive Assistant in the Town Manager's office was**
8 **made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the**
9 **motion carried unanimously.**

10
11 **Motion to reduce the budget for the Telecom Attorney was made by Council Member**
12 **Diamond, seconded by Council Member Kleid. On roll call, the motion carried**
13 **unanimously.**

14
15 **Motion to reduce the Information Systems Budget for Minor Hardware Expense, Software**
16 **Maintenance Expense, Eliminate IS Programming, Reduce GIS Programming, was made**
17 **by Council Member Diamond.**

18
19 Council President Pro Tem Coniglio asked if this would result in paying more on the back end
20 than the \$25,000 allotted on the front end. Town Manager Elwell indicated that the proposed cuts
21 could be prudently done without creating jeopardy.

22
23 **Motion was seconded by Council President Pro Tem Coniglio. On roll call, the motion**
24 **carried unanimously.**

25
26 **Motion to reduce the Emergency Management budget was made by Council Member**
27 **Diamond.**

28
29 Council President Pro Tem Coniglio asked if there was a need for more emergency management
30 hours, in the event that there is a hurricane, or oil spill, was there the ability to up the hours if
31 there was a need. Town Manager Elwell indicated that the current position is not full-time and is
32 paid out of the funds for emergencies.

33
34 **The motion was seconded by Council President Pro Tem Coniglio. On roll call, the motion**
35 **carried unanimously.**

36
37 **Motion to reduce the Human Resources budget by eliminating Retirement Recognition**
38 **Gifts, and reduction in recruiting expenses was made by Council Member Diamond,**
39 **seconded by Council Member Kleid. On roll call, the motion carried unanimously.**

40
41 **Motion to reduce the Finance budget by reducing the audit and bank fees was made by**
42 **Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion**
43 **carried unanimously.**

1 Council Member Wildrick commented that the Finance Department, and Deputy Town Manager
2 Thomas Bradford, did a good job holding the banks to the grindstone to get the best possible deal
3 for the Town.

4
5 Town Manager Elwell stated that the last three items in the Planning Zoning and Building items
6 that Mr. Greg Batton had referred to earlier, do not apply to the State Statute. The first item, for
7 the record, was a contractual expense.

8
9
10
11 **Motion to reduce the Planning Zoning and Building budget by reducing the Contractual**
12 **Plan Review, Digital Scanning, GIS Programming, and Comprehensive Plan Expenses was**
13 **made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the**
14 **motion carried unanimously.**

15
16 Council President Rosow announced that under the Fire Rescue Budget, they would address the
17 first three items together and return to the elimination of the Ocean Rescue Unit after all of the
18 other items had been voted upon.

19
20 Council President Pro Tem Coniglio asked if the Assistant Fire Marshal elimination was a lay-
21 off. Town Manager Elwell indicated that the proposal was with a lay-off, but there was an option
22 in the back-up of allowing the retirement early in the fiscal year.

23
24 Council Member Wildrick was opposed to any lay-offs and suggested that the Town Council do
25 this in a civilized manner. Council Member Diamond and Kleid agreed.

26
27 **Motion to reduce the Fire Rescue budget by eliminating three vacant firefighter positions,**
28 **accept Administrative Lieutenant Position retirement, and hold the Assistant Fire Marshall**
29 **Position in the budget until the retirement occurred, was made by Council President Pro**
30 **Tem Coniglio, seconded by Council Member Diamond. On roll call, the motion carried**
31 **unanimously.**

32
33 **Motion to reduce the Police budget by eliminating Vacant Telecommunications Manager**
34 **Position, reclassify Telecommunications Supervisor to “lead” Position, Eliminate 1,**
35 **Telecommunications Supervisor Position, 1 Telecommunicator Position, Vacant Support**
36 **Services Captain, Vacant Business Community Relations Sergeant, Proposed Accreditation**
37 **Coordinator Position, Other Accreditation Program Expenses, 2 Vacant Police Officers,**
38 **Reclassify Code Enforcement Officer to two PTNB, Eliminate Vacant Crime Scene**
39 **Evidence Tech II made by Council Member Diamond, seconded by Council Member Kleid.**
40 **On roll call, the motion carried unanimously.**

41
42 Council Member Wildrick congratulated the Police Department for being very good in the
43 budget process and coming up with an aggressive plan that benefited the community.

44
45 **Motion to reduce the Public Works budget by replacement of facilities maintenance**
46 **manager, eliminate vacant line employee, 2 vacant Trash services Laborers, Vacant**

1 sanitation Services Laborers, Equipment Operator-Parks, and Assistant Public Works
2 Director, made by Council President Pro Tem Coniglio, seconded by Council Member
3 Diamond. On roll call, the motion carried unanimously.

4
5 **Motion to approve the Recreation Enterprise Fund budget by eliminating the Assistant**
6 **Dockmaster, and reduction in dock security budget, made by Council Member Diamond,**
7 **seconded by Council Member Wildrick.**

8
9 There was discussion regarding the elimination of the Assistant Dockmaster position. Director of
10 Recreation Jay Boodheshwar indicated that when the position became vacant, the duties were
11 reassigned and services have not been compromised. Town Manager Elwell indicated that the
12 level of service has not been cut.

13
14 **On roll call, the motion carried unanimously.**

15
16 Norman Goldblum, 109 Everglade Avenue, suggested that trash collection could be reduced to
17 three days a week and that would save money.

18
19 Council Member Diamond asked for an explanation of the CIP transfer under the Global and
20 Other Cuts section. Town Manager Elwell explained that last year, there was a transfer from the
21 general fund to the Capital Improvement Fund to fast track the CIP program. The Town Council
22 subsequently authorized a bond issue for the CIP program. He felt it was appropriate to bring
23 back the money to the General Fund.

24
25 Council President Pro Tem Coniglio asked about the reduced funding for the Four Arts Library.
26 Town Manager Elwell responded that Irwin Dugin from the Four Arts Library has advised his
27 Board and there were no objections.

28
29 On the reduction of the PAYGO funding for the CIP, Town Manager Elwell indicated that the
30 amount was reduced from one million to \$500,000. The \$250,000 was for paving projects and
31 the other was \$250,000 for sewer and drainage projects. There was discussion about the milling
32 and resurfacing schedule.

33
34 Paul Brazil, Public Works Director, stated that the department was 70% completed with the
35 resurfacing. He noted that if the program stopped now, any roads south of mid-town would not
36 be done unless there was a sewer project. Council Member Wildrick said it was one thing to
37 manipulate numbers, but did not want to let the town deteriorate, as values would go down.

38
39 **Motion to approve the Global and other Cost Cuts budget to transfer \$1.4 million from**
40 **CIP to the General Fund, reduce funding for the Four Arts Library, reduce PAYGO**
41 **funding for CIP, and the contingency reduction, was made by Council Member Diamond,**
42 **seconded by Council Member Kleid. On roll call, the motion carried unanimously.**

43
44 The next item discussed was the elimination of the Ocean Rescue Unit. Council President
45 Rosow announced to clarify some erroneous reporting and for the benefit of the public, that this
46 was his idea. He took full responsibility for it and he was not happy to do it. There was a need to

1 find \$4.5 million dollars in the budget. As they heard, Town Manager Elwell stated that \$1.4
 2 million was non-recurring, which meant that the next year there would be at least a \$2-3 million
 3 deficit. Property tax revenues are going to go down. This was a tough decision, and he has never
 4 liked the specter of having to lay people off, but they are going to have to make difficult
 5 decisions. Council President Rosow continued that the Town Council must be made to continue
 6 its pledge to residents to not increase their taxes. Residents' taxes were likely to increase 12-
 7 15%, because of the County. Many residents on the island have diminishing incomes, and the
 8 income does not increase for some retirees, which included large homes on the lake, ocean, and
 9 billionaire's row. He repeated from earlier Town Council meetings that only 650 properties in
 10 the Town pay 50% of the taxes. They have seen their portfolio decrease, revenues decrease and
 11 the ever increase of property taxes and feel that their taxes are out of control. He noted that
 12 Council Member Wildrick had made the point many times that we could not afford to have a
 13 house out of order. Council President Rosow felt that lifeguards were part of the champagne, and
 14 not the water. As difficult a decision it was, and the criticism received from West Palm Beach
 15 reporters, the issue had to be looked at very carefully. Finally, he stated, with respect to liability,
 16 less than 10% of the beaches were covered by lifeguards. There is more liability because of the
 17 90% that are not lifeguarded. Many cities have sovereign immunity and eliminated lifeguards
 18 because of insurance liabilities. He asked the Town Attorney to address the issues.

19
 20 Town Attorney Randolph explained sovereign immunity and referred the Town Council to the
 21 back-up materials he provided. Town Attorney Randolph cited a Supreme Court case and the
 22 reasons the Town owns the dry sand beach and was different than other areas of Town. He stated
 23 that there was a Town Liability. Because the town had operated as a guarded beach, there was
 24 liability already.

25
 26 Alan Golboro, 2500 S. Ocean Blvd., spoke about the way of saving money and modernizing the
 27 equipment to cut payroll. He suggested that the County lifeguards take over the guarding of
 28 public beaches. The staff could study the modernization of the beach patrol.

29
 30 Council Member Diamond cited his own experiences as a swimmer and a near drowning he had.
 31 He advocated for the keeping of Ocean rescue, and to dig further in the budget for other areas to
 32 cut. He also suggested that employees sacrifice more or else find savings elsewhere in the
 33 budget.

34
 35 Council Member Kleid stated that he moved to Palm Beach for its quality of life and services.
 36 Ocean Rescue is part of the high level of service. He noted that we are citizens of a greater
 37 community than just Palm Beach. He did not want to lay off any present employees. He praised
 38 Town Manager Elwell for doing a great job in following the edict of Town Council to eliminate
 39 \$4.5 million dollars in order to not raise taxes. If the Town Council does not terminate any
 40 employees there will be an \$800k shortfall. He suggested sending Town Manager Elwell back to
 41 the drawing board to find the funds without terminating employees or else there would have to
 42 be a tax increase.

43
 44 Council Member Wildrick said he did not have a prepared speech and proposed a compromise.
 45 He had spoken with Finance Director Jane Struder about his ideas and they were as follows:

- Close Phipps Park as a beach and maintain the other life guard services, but with a reduction in staff of two lifeguards
- Raise parking meter fees to \$5.00 to raise \$400,000 in revenue
- The tennis program loses money each year, make that program pay for itself, or else temporarily close Phipps Beach three days a week.
- Get rid of fluff and learn to compromise.
- There are programs that lose \$285,000 per year yet roads go unpaved.

Council Member Wildrick suggested that Town Manager Elwell revamp the budget in order to get the money in other ways, Lastly, Council Member Wildrick thanked Council President David Rosow for bringing this to the forefront and that took courage

The downside on increasing the cost of the parking meters, business revenue goes down, but there would still be a 25% increase in parking. Council President Pro Tem Coniglio agreed that they could raise revenue of the parking meters along the ocean parks. She did not feel that the residents should have to pay. She was opposed to closing Phipps Park as it would be very confusing to users and could have legal liabilities about protection. Council President Pro Tem Coniglio had also discussed with Finance Director Struder the full amount of the layoff was \$650,000. She hoped that the community and the Town Council will have an open mind and heart to the Palm Beach community and outside of the community to protect the beaches. Her children, ages 0-30, have used the beaches everyday and her grandchildren use the beaches. The last year and a half was anxious and going forward in the next few years will be scary. The budget will again be re-examined and the services that are offered. A shortfall of \$650,000 could mean \$50 per year, per million, increase for each taxpayer. She strongly urged to keep the lifeguard program.

Mark Hassell, Palm Beach Ocean Rescue Supervisor suggested that the Town Council was placing a greater emphasis on trash collection than saving human lives. He pointed out that the beaches have been re-nourished four times by State dollars from Florida taxpayers. He also offered to give up his position and retire, if it meant saving the jobs of the lifeguards.

Stuart Shulman, 2280 S. Ocean Ave., spoke about why the town could not get money for the budget when they raised six million dollars for the new golf course.

Council President Rosow clarified that Council President Pro Tem Coniglio was correct with the savings the first year being \$650,000 for this year and \$800,000 in each subsequent year. Each Council member was given another opportunity to speak.

Council Member Diamond heard several encouraging proposals, and felt there were ways to reduce the budget without a tax increase. He suggested that Town Manager Elwell find the money and save the Ocean Rescue Unit.

Council Member Kleid stated that there was a consensus to not lay off ocean rescue and for them to continue to do the great work they have done in the past. For this year, there was the shortfall

1 of \$650,000, and there was still time before they set the millage rate. He wanted town staff to go
2 back and find another \$650K or else the millage must be raised.

3
4 Council President Pro Tem Coniglio asked if they raised the parking revenues if that was within
5 the grasp and Town Manager Elwell responded that it was. She wished to continue the discussion
6 at the next meeting.

7
8 Council Member Wildrick stated that he was glad to see more compromise. There was \$485,000
9 in parking revenues if rates are raised. On the programs that lose money, they should be held
10 accountable. He would not support a tax increase. That was why the County has a problem.

11
12 Mayor McDonald asked Town Manager Elwell what the tax increase amount would be for the
13 residents and it was \$50.00 per million of assessed value. The Mayor was in favor of keeping the
14 Ocean Rescue Unit. The County collects several million from the bed tax and the County has
15 never given anything back. It was time for the County to stand up and help us with this. Nothing
16 ever comes back. He suggested that the Town Council should direct the Town Manager to draft a
17 letter for the Mayor's signature to the County for more bed tax funds. He was in favor of raising
18 taxes for keeping the ocean rescue service.

19
20 Council President Rosow asked Town Manager Elwell to schedule a Special Town Council
21 meeting in 4-6 weeks. He asked if staff could look for additional savings. There was still more
22 work to be done. The task was to NOT raise taxes. He said with regard to the lifeguards, they
23 were postponing the inevitable, and the deficits were not going to go away. Next year, the
24 property tax revenue would be even lower, with non-recurring savings. Cuts would have to be
25 more draconian.

26
27 Mayor McDonald stated that Council President Rosow was right on point. Council Member
28 Kleid disagreed, and asked that Town Manager Elwell and staff have the opportunity to find
29 other cuts. There are future years and a lot of arrows left to shoot. There were the negotiations
30 with the unions that may result in positive or negative results.

31
32 Council Member Diamond said as they go to future, he will be guided by no tax increases and
33 minimal changes in the quality of life, and that may mean decreasing salaries or lay-offs.

34
35 Council Member Wildrick directed his next statements to the staff, lifeguards, and all of the
36 boards and commissions. He stated that business in this town was real estate, and that was the
37 ability to get higher taxes. Palm Beach is not selling houses. There are other communities that
38 people are going to. People need to see that Palm Beach is the greatest place to be. When taxes
39 are coming in, there was higher tax base, and thus, a higher rate of sales. Everyone should all
40 work together to keep top line going, all staff should be friendly and very consumer friendly.

41
42 Town Manager Elwell was directed at the September 13, 2010 at 5:01p.m., Special Town
43 Council meeting to bring forth his revised recommendations. Town Manager Elwell clarified that
44 his directive was to provide a budget that did not increase the tax rate. Town Manager Elwell
45 asked for formal adoption of two motions:

Motion to increase the parking rates to \$5.00 per hour in the immediate vicinity of the Mid-Town Beach (along South Ocean Blvd.) and Phipps Ocean Park, with no impact to Town Residential side street parking was made by Council Member Kleid, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

Motion to approve the filling of the ten positions identified in the budget as essential core functions or in a revenue producing position, with the exceptions of the retiring fire-rescue position and the Ocean Rescue Unit continuing in tact, made by Council President Pro Tem Coniglio, seconded by Member Kleid. On roll call, the motion carried unanimously.

Council President Rosow announced that the next item were the 17 items on page 10 of the back-up. He stated that Palm Beach generates \$232 million in taxes with 10,000 residents and Palm Beach keeps only \$42 million dollars. \$190 million dollars goes to the County, School Board, and other taxing districts. All of those entities are raising the taxes. The Town Council views taxation as a draconian thing on this Town Council. Other authorities feel raising taxes was fair game. No one made their money by paying taxes. He read the seventeen items as follows:

1. Take final action on reforming employee pension systems.
2. Continue to review all other aspects of employee compensation (pay and benefits) and initiate additional reforms, as needed.
3. Address the funding requirements of the Town's Coastal Protection Program.
4. Review all aspects of Recreation programming, including but not limited to service levels, staffing, fee structures, and the possibility of privatizing either service delivery functions or entire facilities.
5. Review all aspects of Fire - Rescue operations, including but not limited to service levels, management structure, staffing, equipment, the applicability of national service standards to local circumstances (particularly as it relates to EMS vs. fire staffing and levels of service), and the possibility of contracting for some of the resources necessary to meet Town approved standards.
6. Review staffing and functions in the administrative Town Hall offices (Town Manager's Office, Finance Department, Human Resources Department, and Town Clerk's Office) to determine whether additional teamwork could create cost savings, service improvements, or both.
7. Identify ways to improve the cost effectiveness of Town legal services, with particular emphasis on the question of in -house Town Attorney vs. contracted Town Attorney.
8. Review with all advisory boards and commissions the possibility of reducing the

1 frequency of their meetings to quarterly or bi- monthly.

2
3 9. Analyze the Town's fleet and seize all opportunities to downsize both the number and the
4 size of Town vehicles.

5
6 10. Extend life expectancies for all remaining Town vehicles and equipment within the
7 Equipment Replacement Fund (to require the longest prudent useful life for each item
8 and reduce the annual depreciation expense within the Town's budget).

9
10 11. Review the Town's recycling program to determine whether it would be cost effective
11 and otherwise advisable to reduce or eliminate this service.

12
13 12. Review the pros and cons of reducing the frequency of Town residential garbage
14 collection to twice per week.

15
16 13. Review various methods of capital improvement funding (operating budget vs. bond fund
17 vs. pay -as- you -go capital fund) to eliminate redundancy, consolidate where appropriate,
18 and streamline both the funding and the management of the Town's CIP.

19
20 14. Consider additional opportunities to manage on- street parking as a commodity, including
21 but not limited to adding kiosks in locations where parking is currently free, increasing
22 parking fees differentially based upon differences in demand, and modifying the Town's
23 permit parking program that allows individuals to prepay for parking in certain areas.

24
25 15. Recommend other potential sources of non -tax revenue that do not merely shift a
26 Townwide tax to being a Townwide fee.

27
28 16. Create a formal program for citizen volunteers to assist in applicable Town functions.

29
30 17. Continuously ask ourselves the following questions for all functional areas of Town
31 government:

32
33 What do we do?

34 Why do we do it?

35 Should we keep doing it (or not)?

36 If we should keep doing it, is there a better way to do it?

37
38 Council president Rosow commended the staff and Town Manager Elwell for the work they have
39 done thus far.

40
41 Richard Buttery, Palm Beach Firefighter of twenty two years, supported the collection of
42 revenue from the beach parking areas.

43
44 Council Member Kleid added to the list a review of the pros and cons of not having the Town
45 pick up yard waste materials.

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V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further Business, the Special Town Council meeting of Thursday, August 12, 2010, was adjourned at 2:56 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent Agenda

Agenda Title

Approval of Major Matters Considered by the Architectural Commission at its Meeting of August 25, 2010.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated September 8, 2010, from John S. Page, Director of Planning, Zoning and Building
- Minutes of the Architectural Commission meeting of August 25, 2010

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

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 August 25, 2010

Date: September 8, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the major items that were approved by ARCOM at the regularly scheduled meeting of August 25, 2010.

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 August 25, 2010.

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 360 SOUTH COUNTY ROAD

WEDNESDAY, AUGUST 25, 2010, 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: (9:00:20 a.m.)

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

II. ROLL CALL: (9:00:25 a.m.)

The following members were present: Jeffery W. Smith, Chairman, William J. Strawbridge, Jr. Vice Chairman, Leslie C. Diver, Kenn Karakul, Nikita Zukov, and Robert J. Vila; and Alternate Members: Ann L. Vanneck, Martin D. Gruss and Peter I. C. Knowles II. Member Samuel M. Boykin was absent (excused).

Staff members present were John Page, Director of Planning, Zoning & Building, John Lindgren, Planning Administrator, and Cynthia Delp, Secretary to the Architectural Commission. Town Attorney John Randolph was not present.

III. PLEDGE OF ALLEGIANCE: (9:00:45 a.m.)

IV. APPROVAL OF THE MINUTES FROM THE JULY 28, 2010 MEETING: (9:01:05 a.m.)

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

V. APPROVAL OF THE AGENDA:

Mr. Page reported that B-036-2010, 12 Sloan's Curve, has been withdrawn by the applicant. Secondly, the informal review for the base of the Worth Avenue Christmas tree has been postponed to the September meeting.

**MOTION BY MS. DIVER APPROVING THE AGENDA, AS REVISED.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

VI. ADMINISTRATION OF THE OATH TO PERSONS WHO WISH TO TESTIFY:
(9:02:14 a.m.)

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

VII. OTHER BUSINESS: (9:02:28 a.m.)

Informal Review: Design of Worth Avenue Holiday Tree Base (Paul Brazil, Director of Public Works)

This matter will be discussed at the September meeting as stated earlier in these minutes.

Informal Review: "Palm Beach Police & Fire Radio Antenna" at 3170 South Ocean Boulevard

Let the record show that since this agenda item was created, the location for the proposed antenna was changed from 3170 South Ocean Boulevard to the Ambassador South at 2774 South Ocean Boulevard.

Major Rick Howe addressed the commission relative to this informal review of the request for an antenna to facilitate Police and Fire communications which will serve to improve coverage in the south part of town. He was accompanied by Hugh Murrill, Vice President of Citation Communication who explained the details of the project. The condominium has approved the installation of the low profile cell site. Mr. Murrill showed a photo of how the antenna will look when placed on the building, and suggested that it be painted either white or blue. The commission saw this as a necessary project, but suggested that the antenna remain natural, i.e., not painted. Ms. Diver disclosed that she is the Administrator for the Palm Beach Police Foundation. This matter will be heard at the September ARCOM meeting for formal review.

VIII. PROJECT REVIEW(9:10:46 a.m.)

A. MAJOR PROJECTS - OLD BUSINESS

B25/10 Demolition and New Construction of Publix Supermarket (In association with Site Plan Review #4-2010 with Special Exception and Variances

ARCOM TO MAKE RECOMMENDATION REGARDING VARIANCES

Address: 265 Sunset Avenue

Applicant: Publix Supermarkets, Inc. & Sunset Avenue Corp.

Architect: Fisher and Associates, LLC

Project Description: The modified application of Publix Super Markets, Inc. and Sunset Avenue Corp.; relative to property commonly known as 265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting Site Plan Review and Special Exception to construct a 53,272 (44,018 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 201 off-street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage will be within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen as equipment on the roof. Part of the proposed design is to have two generators located on the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the proposed grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is town serving. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 257'-5" in lieu of the 150 foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 6'7" in lieu of the 10 foot minimum required based on building height; (c) to allow a side yard setback of 3'9" in lieu of the 10 foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a total square footage of 53,272 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow a rear yard setback of 14'2" in lieu of the 15 foot minimum required; (g) to allow an architectural tower to be on the entry façade that is not permitted by Code; (h) to allow the height of the business identification sign to be 22 feet in lieu of the 15 foot maximum allowed; (i) to allow the height of the proposed one story grocery store to be 25' (to be confirmed) feet in lieu of the 15 foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to be 36'6" (to be confirmed) feet in lieu of the 20 foot maximum allowed; (k) to allow 201 parking spaces in lieu of the 220 required (a deficit of 19 parking spaces); (l) to allow a 4 parking spaces with a depth of 17'6" in lieu of the 18 feet minimum required. [Attorney: Maura A. Ziska]

Please note that the Publix project (prior to modification) was reviewed and deferred from the April meeting, and the following motion was made at that time: MOTION BY MRS. VANNECK FOR DEFERRAL FOR ONE MONTH. MOTION SECONDED BY MR. ZUKOV. MRS. VANNECK CLARIFIED SOME REASONS FOR DEFERRAL: TOO MANY UNANSWERED QUESTIONS; THE SITING OF THE STORE IS A MAJOR PROBLEM; AND MORE PIERCINGS IN THE SHELL WOULD MAKE THE STORE MORE USER FRIENDLY. MR. ZUKOV CALLED FOR RE-DESIGN OF THE BUILDING, AND A DIFFERENT ROOF TREATMENT. HE NOTED THAT THE VARIANCES WOULD PROBABLY ALL BE ACCEPTABLE IF THE COMMISSION LIKED THE BUILDING ARCHITECTURE AND THE SITE PLAN. MR. SMITH CALLED FOR THE RE-STUDY OF THE SITE PLAN, ENCOURAGED THE ACQUISITION OF THE WACHOVIA PROPERTY; RECOMMENDED MORE THAN ONE ENTRANCE INTO THE STORE;

RECOMMENDED THE PURSUIT OF THE "SENSE OF COMMUNITY" WITHIN THE STORE...A PLACE TO HAVE COFFEE WITH FRIENDS; STRESSED THE IMPORTANCE OF LANDSCAPING; AND NOTED THAT IT IS TOO EARLY TO EVEN CONSIDER THE VARIANCES. MRS. VANNECK RE-CLARIFIED THAT IT IS RECOMMENDED THAT THE DESIGN INCLUDE MORE ENTRANCES (BOUTIQUE-LIKE ENTRANCES) INTO SPECIFIC AREAS OF THE STORE TO MAKE IT MORE STREET FRIENDLY; IT IS RECOMMENDED THAT THERE BE WINDOWS ON THE FIRST FLOOR; IT IS RECOMMENDED THAT THERE BE MORE SHADE TREES; AND, IT IS RECOMMENDED THAT THE SITE PLAN BE RE-STUDIED. MR. ZUKOV CALLED FOR MORE WORK ON THE ARCHITECTURE AND THE ROOF; MR. SMITH CALLED FOR RE-STUDY OF THE SITE PLAN, PARKING CIRCULATION AND TRUCK UNLOADING AREA. MOTION CARRIED UNANIMOUSLY. At the May meeting, after hearing the project, there was a motion for deferral to the June meeting and a motion to hold a workshop devoted to the Publix project on June 8th. At the June meeting, the project was deferred to the July meeting to allow the architect time to re-design the project. (The re-designed project heard at the July meeting is as noted above.) At the July meeting, after hearing the re-designed project, there was a motion for deferral of the architecture to the August meeting.

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

Attorney Maura Ziska, representing Publix, stated that the variances requested were approved by the Town Council at their last meeting, except for the variance for parking which was adjusted to accommodate ninety degree parking and larger drive aisle widths for truck deliveries. The project will have to return to the Town Council for site plan approval.

Brian Fisher, Fisher Architects, reviewed the revised elevations, describing, at length, how the design has changed since the July meeting. Areas of change include, but are not limited to arches, columns, relocated barrel tile railings, stonework and keystones, tower elements, railings, pre-cast bollards, and landscaping. The roof will be done in a 60/20/20 tri-color clay tile blend. Color finishes for the wall (shade of white) and the windows (shade of green) were shown.

Mr. Smith took exception to the number of bollards shown in front of the store, and suggested that more landscaping be used in front of the building instead. The applicant prefers keeping the area as clean as possible and using bollards since the areas close to the entrance/exit doors are prone to trip and fall incidents. Don Skowron of Morgan Wheelock agreed that the bollards are more suitable to the flow of pedestrians and shopping carts.

Mr. Skowron proceeded to discuss the landscape plan, but was asked to hold off on site landscaping until the site plan review was done by the Town Council. Mr. Page intervened indicating that the Town Council would like ARCOM to review both the building architecture and the landscaping today. As such, Mr. Skowron continued with the presentation. The applicant was asked whether, near

the Sunset Avenue driveway entrance and at the west most end of the parking area along the south facade, one of the handicap parking spaces could be relocated to allow for additional greening and a nicer entrance. There are a total of seven (7) handicap spaces on the site, and they are the closest spaces to the store. There was a suggestion to group all of the handicap spaces together, but Mr. Fisher could not support that suggestion for code reasons. After discussion, Mr. Fisher thought it might be possible to relocate the one handicap space to accommodate the commission's request. It was also noted that valet parking is available at this Publix store.

Several of the members stated that they would prefer that the landscape material be natural, rather than clipped and shaped. Others liked the mix of natural and shaped trees as proposed.

Regarding parking lot lighting, there is a mixture of two, three, and four head fixtures. In response to a previous request, the height of the black poles will be maintained at 15 feet, thus meeting Town code. Ms. Ziska added that originally, the applicant had requested fewer poles because they were taller, but the taller poles would have required a variance. Since the commission wanted lower poles, the number of poles had to increase to 40. It was noted that in the evening hours, after the store is closed, not all of the light poles will be illuminated, but there will be some lighting remaining for security reasons. The discussion ensued about the level of lighting which is proposed. Several of the members wanted to know how many foot-candles of light are present now versus the foot-candles proposed. Some members felt it would be acceptable to maintain the existing light level. The design team responded that the existing light level no longer meets safety requirements. They also noted that the proposal includes much more landscaping which will absorb some of the lighting. Members wanted to know how much brighter this parking lot will be if approved as proposed. Chairman Smith felt this was a legitimate concern, and would be especially important to residents of the Biltmore.

At this point, the discussion moved forward to discuss the architecture of the building with each of the commission members offering their comments. Most members complimented the design team for their efforts to respond to comments made at previous meetings which helped to advance the project. Mr. Gruss felt the design could still be much better and felt the commission should demand the exemplary architecture previously requested. Chairman Smith responded that with the Town Council making the size and site plan decisions, the requirement for exemplary architecture is no longer necessary. He commented that for a Publix, they have done a good job.

MOTION BY MS. DIVER FOR APPROVAL OF THE PROJECT WITH THE FOLLOWING CHANGES, AND THE APPLICANT IS TO RETURN TO THE COMMISSION TO SHOW THE APPROVED CHANGES. (*SEE MOTION CLARIFICATION BELOW, AT POINT OF VOTE, RELATIVE TO APPLICANT HAVING TO RETURN TO ARCOM):

MOTION RE-STATED BY MS. DIVER TO APPROVE THE PROJECT WITH THESE CHANGES:

PLAN SHEET E-1 (FRONT, WEST ELEVATION): LOOK AT THE STONework UNDER THE PUBLIX SIGN AND HAVE THE PROPORTIONS CORRECTED; LOOK AT THE KEYSTONES AT EACH SIDE AND MAKE THEM SMALLER AND PROPORTIONALLY CORRECT; REMOVE ALL OF THE CAST STONE SURROUNDS FROM THE WINDOWS; MAKE SURE THE WINDOWS ON THE SECOND FLOOR HAVE ROLLED EDGES AND ARE MADE MORE NARROW; THE BARREL TILE DECORATIONS SHOULD BE CENTERED OVER THE ARCHES, THEREBY REDUCING THE OPENINGS FROM 5 TO 4; AND, REMOVE BALCONY SURROUND.

SHEET E-2 (NORTH ELEVATION): REMOVE THE SURROUNDS AROUND THE WINDOWS AND MAKE SURE THE WINDOWS ARE PROPORTIONALLY CORRECT ON THE SECOND FLOOR.

SHEET E-3 (SOUTH ELEVATION): ARCHES AND COLUMNS HAVE BEEN CORRECTED, BUT RETURN TO THE OLD PLAN (FROM PREVIOUS MEETING) AND REMOVE THAT CENTER FOCUS PIECE; REMOVE THE TILE PLAQUES; HAVE SINGLE WINDOWS ON EACH SIDE ON THE SECOND FLOOR; AND, REMOVE THE STONE SURROUNDS HERE AND UNIVERSALLY.

SHEET E-4 (EAST ELEVATION): NO CHANGES, EXCEPT FOR THE BALCONIES.

UNNUMBERED DETAIL SHEET-FRONT ENTRANCE: "BEEF UP" (MAKE LARGER) THE COLUMNS BETWEEN THE ARCHES ABOVE THE PUBLIX SIGN .

UNNUMBERED DETAIL PAGE - TOWER ELEMENT: NO ADDITIONAL COMMENTS

UNNUMBERED DETAIL PAGE - ARCHES/SINGLE COLUMNS: "BEEF UP" THE PLATE ABOVE THE CAPITALS.

UNNUMBERED DETAIL PAGE - ARCHES/DOUBLE COLUMNS: NO ADDITIONAL COMMENTS

MOTION SECONDED BY MR. ZUKOV.

Mr. Smith called for public comments. Attorney Jeff Rembaum, representing the Palm Beach Hotel and Condominium, requested additional landscaping on the North elevation. Ted Cooney, 495 North Lake Way, complimented the commission and the design team. He recalled that perhaps ten years ago, there were gates to close off the parking lot in the evening hours. Nick Abiusi, Store Manager, testified that the Town requested the gates because of the problems occurring in the parking lot at that time because of the close proximity of E.R. Bradley's and 251 Sunrise. There are no problems of this nature any longer.

MOTION CARRIED UNANIMOUSLY. (* IT WAS CLARIFIED THAT THE APPLICANT IS TO MAKE THE CHANGES AND THOSE CHANGES WILL BE REVIEWED BY STAFF AND THE CHAIRMAN PRIOR TO PERMIT ISSUANCE.)

LANDSCAPING:

MOTION BY MR. ZUKOV TO APPROVE THE LANDSCAPING WITH THE FOLLOWING CHANGES OR REVISIONS: THAT LANDSCAPING BE ADDED TO THE SOUTHWEST CORNER OF THE BUILDING IN THE AREA OF A PROPOSED HANDICAP SPACE, TOGETHER WITH THE RELOCATION OF THAT HANDICAP SPACE; AND THAT TWO OAK TREES TO MATCH THE OAK TREES TO THE WEST BE PLACED THERE; THAT THE LANDSCAPING THROUGHOUT THE PARKING LOT BE NATURAL, WITH AN AVOIDANCE OF MANICURED OR CLIPPED TREES; TO ADD ADDITIONAL LANDSCAPING ON THE NORTH ELEVATION; AND, TO HAVE TWO BEAUTIFUL LARGE TERRA COTTA COLORED POTS NEAR THE STORE ENTRANCE.

MOTION SECONDED BY MR. VILA.

MOTION CARRIED 6-1, WITH MR. STRAWBRIDGE OPPOSED.

LIGHTING:

MOTION BY MR. ZUKOV FOR APPROVAL OF THE LIGHT POLES AND FIXTURES, BUT THE FOOT-CANDLES SHALL BE NO HIGHER THAN AN AVERAGE OF 4.5 FOOT-CANDLES.

At this point, Chairman Smith stated that he needed to know the existing foot-candle reading vs. the proposed. Members stated that they do not wish the light to exceed Town Code, with its 8 foot-candle maximum for commercial buildings. (It was clarified later that this maximum is not actually "code", but is a "policy" established by a previous Architectural Commission.)

MOTION AMENDED BY MR. ZUKOV THAT THE LIGHT POLES AND LIGHTS ARE APPROVED, AND AT THE NEXT MEETING NEXT MONTH, THE APPLICANT IS TO REPORT ON THE EXISTING FOOT-CANDLES VS. THE PROPOSED FOOT-CANDLES.

Ms. Ziska testified that the existing foot-candle level is less than one (1).

MOTION SECONDED BY MRS. VANNECK THAT IT (THE PROJECT) COMES BACK.

Chairman Smith asked Mr. Zukov to restate his motion.

MOTION BY MR. ZUKOV FOR APPROVAL OF THE LIGHTS AND LIGHT POLES, AND THAT YOU COME BACK...UNLESS YOU'RE TELLING US IT'S ONE FOOTCANDLE... Ms. Ziska confirmed that it is 1 foot-candle.

Mr. Page commented that ARCOM could make a recommendation to the Town Council that the foot-candles of light should be minimized so there is no adverse affect on the neighbors. Mr. Lindgren suggested that the foot-candles could be limited to approach 0 at the property line. Mr. Smith was concerned about the residents of the Biltmore and the potential of eight (8) times more light coming from the parking lot. Nick Abiusi, store manager, testified that even with the existing energy management system at Publix, most of the lighting decreases at night, with the exception of some security lighting. There was some testimony that the landscaping will absorb some of the lighting. Mr. Skowron stated that the canopies of the proposed trees will be taller than the light poles and fixtures. The light fixtures can also be shielded on their sides. All parking lot lighting will be downlighting. There was also a discussion relative to exterior light fixtures on the building.

MOTION AMENDED BY MR. ZUKOV TO INCLUDE THAT THERE BE NO INDUSTRIAL LIGHTS ANYWHERE ON THE BUILDING, EXCEPT FOR ONE AT THE LOADING DOCK.

MOTION CARRIED UNANIMOUSLY.

LET THE RECORD SHOW THAT SINCE THE APPLICANT REPORTED, DURING THIS MEETING, THAT THE EXISTING FOOTCANDLE READING IS ONE (1), THERE IS NO NEED FOR THEM TO RETURN NEXT MONTH.

The applicant was asked to make the interior of the store beautiful and special.

MOTION BY MR. ZUKOV FOR APPROVAL OF DEMOLITION OF THE EXISTING PUBLIX STORE, WITH THE USUAL PROVISOS FOR DEMOLITION PROJECTS.

MOTION SECONDED BY MS. DIVER.

MOTION CARRIED UNANIMOUSLY.

Let the record show that the Chairman called for a ten minute break at 11:30 a.m. The meeting was reconvened at 11:40 a.m.

B. MAJOR PROJECTS - NEW BUSINESS:

B-036-2010 Additions

ARCOM TO MAKE RECOMMENDATION REGARDING VARIANCE(S)

Address: 12 Sloan's Curve Drive

Applicant: Muriel G. Leventhal & Norman B. Leventhal

Architect: Brower Architectural Associates Inc.

Project Description: Reconfiguration of existing bedrooms (3 & 4), and the creation of an additional bathroom along with the expansion of existing attic above; creation and minor expansion of new breakfast area; relocation of laundry with minor expansion; minor expansion of entry vestibule; re-design of west elevation to accommodate above mentioned changes. The applicant is requesting a Site Plan Review to construct on the first floor: (1) a 19 square foot infill addition

for a breakfast room; (2) a 13 square foot infill addition for a laundry room expansion; (3) a 10 square foot infill addition for entry vestibule expansion. On the second floor: (1) a 79 square foot infill addition for a bedroom expansion; (2) a 200 square foot addition to expand two bedrooms; and (3) a 226 square foot addition to expand the attic. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code. A variance is requested to allow the breakfast room addition and bedroom addition to increase the lot coverage to 47.6% in lieu of the 47.1% existing and the 35% maximum allowed in the PUD-B district. [Attorney: Maura A. Ziska]

(Please note that this item was withdrawn by the applicant and was handled under Approval of the Agenda.)

B-037-2010 New conservatory

Address: 286 Jamaica Lane

Applicant: Elizabeth Raese

Architect: Harvey E. Koehnen

Project Description: Remove existing 6x8 dollhouse and replace with new 14x15 glass conservatory (white aluminum)

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

Architect Harvey Koehnen presented this request. He acknowledged that there had been a similar request for this property which required a variance, but now the height of the conservatory has been lowered, eliminating the need for a variance. The conservatory (9 ft. 7" tall) will not be air conditioned, but the side windows are operable.

Mr. Lindgren read a letter into the record dated August 23, 2010 from Elizabeth Marshall in opposition to the project. Ms. Marshall, 273 Bahama Lane, addressed the commission. She acknowledged that the height has been lowered, but the size is still the same. She testified that this conservatory will be seen from every room of her home, and she objects to the project as it disturbs the privacy and intimacy of her property.

Members commented that the conservatory should be landscaped out so it remains a personal experience for the subject property owner only. The architecture and selection of materials for the conservatory were questioned as well. The applicant had not submitted a landscape plan with his presentation.

MOTION BY MR. ZUKOV FOR DEFERRAL OF THE PROJECT SO THE APPLICANT CAN SHOW PROPER LANDSCAPING SCREENING WHICH PROTECTS THE NEIGHBOR'S VIEWS AND THE VIEWS FROM THE ROAD.

**MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

Mr. Smith added that this is the second time for this proposal; the architecture is not great; why not do a real, proper, architectural conservatory rather than this screen room with glazing.

B-038-2010 Demolition

Address: 255 Nightingale Trail

Applicant: Laurence Austin

Architect: SKA Architects/Patrick W. Segraves

Project Description: Demolition of existing two-story wood frame home

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

Mindy Schwab from SKA Architects presented this request. She provided a demolition report for this 1937 wood structure with white siding. She stated that perimeter landscaping will be retained as well as significant trees. Since the plans did not indicate the trees and landscaping which are to remain, Ms. Schwab was allowed to return to her office to bring back that information.

MOTION BY MS. DIVER FOR DEFERRAL TO THE END OF THE MEETING.

MOTION SECONDED BY MR. ZUKOV.

MOTION CARRIED UNANIMOUSLY.

At the end of the meeting, since Ms. Schwab had not yet returned, the following motion was made:

MOTION BY MS. DIVER FOR DEFERRAL TO THE SEPTEMBER MEETING.

MOTION SECONDED BY MR. KARAKUL.

MOTION CARRIED UNANIMOUSLY.

B-039-2010 Awning

ARCOM TO MAKE RECOMMENDATION REGARDING VARIANCE(S)

Address: 130 Sunrise Avenue PH3

Applicant: Jeraldine Meltzer

Architect: The Lawrence Group

Project Description: Installation of one (1) permanent awning totaling 460 square feet over the terrace on the seventh floor of a seven-story condominium building

The applicant is requesting Site Plan Modification with variances to allow one (1) permanent awning totaling 460 square feet over the terrace on the seventh floor of a seven story condominium building. Variances are requested to allow the awning at a height of 61.5 feet in lieu of the 23.5 feet maximum height allowed; to allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed; to allow the awning with a front yard setback of 71.25 feet in lieu of the 123 feet minimum required for multi-family use; to allow the awning with a side yard setback of 49.5 feet in lieu if the 61.5 feet

minimum required for multi-family use in the R-C Zoning District. [Attorney: Maura A. Ziska]

Call for disclosure of ex parte communication: None declared

Architect Eugene Lawrence and Attorney Maura Ziska were present on behalf of the property owner. Ms. Ziska discussed the variances requested for the project. She explained that the owner must be very careful in the sun and needs the awning (40' long x 8' wide) for protection. The white awning on a white frame has been approved by the condo board.

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

**MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

MOTION BY MR. ZUKOV FOR APPROVAL OF THE PROJECT AS PRESENTED.

**MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

B-040-2010 Awning

ARCOM TO MAKE RECOMMENDATION ON VARIANCE(S)

Address: 130 Sunrise Avenue PH9

Applicant: Rita Schneider

Architect: Tony Zaija, Ames Bennett

Project Description: Installation of one (1) retractable awning totaling 142.38 square feet over the terrace on the seventh floor of a seven-story condominium

The applicant is requesting a Site Plan modification with variances to allow one (1) retractable awning totaling 142.38 square feet over the terrace on the seventh floor of a seven story condominium building. Variances are requested to allow the awning at a height of 61.5 feet in lieu of the 23.5 feet maximum height allowed; to allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed; to allow the awning with a rear yard setback of 38.58 feet in lieu of the 123 feet minimum required for multi-family use. [Attorney: Maura A. Ziska]

Call for disclosure of ex parte communication: None declared

Architects Tony Zaija and Ames Bennett and Attorney Maura Ziska were present on behalf of the property owner. Ms. Ziska explained the variances needed for the project and testified that the project has been approved by the condo board. This white awning is a retractable awning which is smaller than the awning approved for the same building in the last project.

MOTION BY MR. KARAKUL THAT IMPLEMENTATION OF THE PROPOSED VARIANCES WILL NOT CAUSE NEGATIVE ARCHITECTURAL IMPACTS.

**MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

MOTION BY MS. DIVER FOR APPROVAL OF A WHITE AWNING AS PRESENTED.

**MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

B-041-2010 Antenna and equipment cabinet

Address: 100 Worth Avenue

Applicant: Clear Wire Broad Band

Architect: ALL PRO Consulting Group

Project Description: Attached Broad Band antennas to railing along top of roof line and place Back Haul dish behind stealth panel on penthouse. Also place equipment cabinet on roof next to penthouse.

Call for disclosure of ex parte communication: There were no ex parte declarations. Mr. Smith disclosed that he owns stock in Clearwire.

Ms. Betty Tufford with Clearwire and Randy Stevenson of All Pro Consulting Group presented the request as described in the Project Description above. She explained that the antennae will be mounted in the rooftop railing (on the front side of the balustrade in two locations - one South and one West) and will be disguised as railing. The necessary dishes will be placed on the penthouse with stealthing built around them. Ms. Tufford testified that the condo board has approved this installation. Clearwire is a broadband wireless network bringing high speed internet to local businesses and residents to make businesses more mobile. Mr. Stevenson presented a sample of the stealth material which will be used in this application. The commission asked that the rooftop box be boxed in so that it does not appear to be hanging over the edge without support.

MOTION BY MR. KARAKUL FOR APPROVAL OF THE WORK AS DESCRIBED, BUT TO BRING THAT PANEL ALL THE WAY DOWN TO THE BOTTOM OF THE WHITE TO BOX IT IN.

**MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

B-042-2010 Patio & landscape

Address: 1436 North Ocean Way

Applicant: Nader Tony Trust

Architect: Parker-Yanette Design Group Inc.

Project Description: Patio enlargement and landscape renovation plan

Call for disclosure of ex parte communication: None declared

Mr. Lindgren testified that Smith & Moore had brought a project to ARCOM for this property, and it was approved subject to the condition that if the landscaping was at all altered, they would have to come back to the commission to get approval for any revised landscaping. In the course of construction at the site, much of the landscaping was removed which has brought this matter to ARCOM today.

Steve Parker, Landscape Architect, with Parker Yvette, presented this request. He presented the proposed landscape plan and provided photos of the existing site. The commission was concerned about the amount of landscaping which had been removed from the site, and was particularly concerned about a substantial Seagrape which was there.

MOTION BY MS. DIVER FOR APPROVAL OF THE LANDSCAPING AS PRESENTED, WITH THE POSSIBILITY TO ASK THE TOWN TO SEE THAT THE SEAGRAPE TREE IS HEALTHY, BUT IF IT HAS BEEN "HACKED", IT NEEDS TO BE REPLACED WITH A HEALTHY SEAGRAPE IN THE APPROPRIATE SIZE.

**MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

C. MINOR PROJECTS - OLD BUSINESS

A-009-2010 Balustrade & site wall

Address: 300 Dunbar Road

Applicant: Dean O'Hare c/o M.Timothy Hanlon

Architect: T & L Architecture Inc.

Project Description: Addition of ornamental balustrade on top of existing parapet. Also, addition of new site wall at entry points of driveway, replace existing site wall at pool and related landscaping

Please note that at the July meeting, there was a motion for approval of the project, with the proviso that the two piers be added as recommended, that there is a solid wall by the swimming pool area, and, that the applicant returns with details of the design of the front door. PLEASE NOTE THAT THE ARCHITECT HAS REQUESTED DEFERRAL OF THE FRONT DOOR DESIGN TO THE SEPTEMBER MEETING.

MOTION BY MS. DIVER FOR DEFERRAL TO THE SEPTEMBER MEETING.

**MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

D. MINOR PROJECTS - NEW BUSINESS

IX. COMMUNICATIONS FROM CITIZENS (3 MINUTE LIMIT PLEASE)(12:19:44 a.m.)

None

X. COMMENTS OF THE ARCHITECTURAL COMMISSION AND DIRECTOR OF PLANNING, ZONING AND BUILDING DEPARTMENT:(12:19:46 a.m.)

None

XI. ADJOURNMENT:

**MOTION BY MS. DIVER TO ADJOURN THE MEETING AT 12:33 P.M.
MOTION SECONDED BY MR. STRAWBRIDGE.
MOTION CARRIED UNANIMOUSLY.**

The next meeting of the Architectural Commission will be held on September 22, 2010 at 9:00 a.m. in the Town Council Chambers, 2nd Floor, 360 South County Road, Palm Beach.

Respectfully submitted,

Jeffery W. Smith, Chairman
ARCHITECTURAL COMMISSION

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TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 97-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Renewal of the Consulting Services Agreement Between the Town of Palm Beach and Research Atlantica, Inc. as Historic Landmarks Preservation Consultant in an Amount Not to Exceed \$45,850, and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated August 27, 2010, from John Page
- Resolution No. 97-10
- Proposal Dated April 19, 2010, from Jane S. Day

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building

Re: Renewal of Consulting Services for Research Atlantica, Inc.
Resolution No. 97-10

Date: August 27, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council adopt Resolution No. 97-10, and authorize the Town Manager to enter into a consulting service agreement for retention of Research Atlantica, Inc. for historic preservation consulting services for the 2010-2011 fiscal year.

GENERAL INFORMATION

Research Atlantica has provided consulting services to the Town of Palm Beach since 1992. During that time Jane Day, President, has brought into the Town \$373,000 worth of grants for historic preservation projects, facilitated the placement of Town Hall on the National Register of Historic Places, completed 90 designation reports resulting in local protection, and administered 36 tax abatement projects.

The use of this service allows the Town to continue to maintain its historic preservation program without the necessity of employing full-time staff and associated costs. The agreement provides an estimate of \$45,850 for the various items outlined in the budget, with services to be provided at the same hourly rate as under the current agreement. Consultant activity includes time for research and writing of local designation reports, research into possible projects for the 2010/2011 season, and investigations into landmarking suggestions by Town Council members, Landmark Commissioners and the public. It also includes research into past actions when needed to defend current landmarks. At the present time only one designation hearing for 105 Banyan Road is being carried over from the 2009/2010 season. It is anticipated, however, that more designation reports (approximately ten or more) will be forthcoming next season because of the completion of the Historic Sites Survey and recommendations that follow the final report.

FUNDING/FISCAL IMPACT

The \$45,850 necessary to fund this agreement is included in the FY 2011 budget.

TOWN ATTORNEY REVIEW

Resolution No. 97-10 has been reviewed and approved by the Town Attorney as to legal form and sufficiency.

Attachment

cc: Jane S. Day, Research Atlantica, Inc.

RESOLUTION NO. 97-10

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Renewal of the Consulting Services Agreement Between the Town of Palm Beach and Research Atlantica, Inc. as Historic Landmarks Preservation Consultant In an Amount Not to Exceed \$45,850 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 agreement for historic preservation consulting services between the Town of Palm Beach and Research Atlantica, Inc., as the Town historic preservation consultant, in an amount not to exceed \$45,850 for FY11, is hereby approved and the Town Manager is authorized to execute the same on behalf of the Town.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

Research Atlántica, Inc.

728 GRANADA DRIVE
BOCA RATON, FL 33432

(561) 362-4473
FAX (561) 362-8842

April 19, 2010

Mr. John Page, Director
Planning, Zoning and Building Department
360 South County Road
Palm Beach, Florida 33480

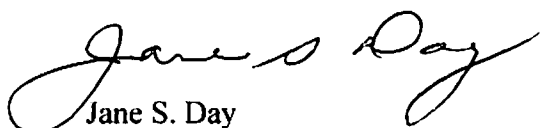
re: 2010/2011: Preservation Consultant Budget

Dear JP,

Enclosed is my budget for Landmark Consulting activities for the coming fiscal year. Because of budget restraints within local government, I am not requesting an increase in my hourly fee.

I would be happy to discuss any of these items with you and make adjustments as you think necessary. As in past years, you will only be billed for hours spent. Thank you for your consideration in this matter.

Sincerely.


Jane S. Day
Preservation Consultant

April 19, 2010

Mr. John Page, Director
Planning, Zoning, and Building Department
Town Hall
360 South County Road
Palm Beach, Florida 33480

Dear Mr. Page,

The following outline is RESEARCH ATLANTICA, INC.'s estimated budget as the Preservation Consultant for the Town of Palm Beach for the 2010/2011 fiscal year. Because of budget restraints within local government, we are not requesting an increase in the hourly fee. The figures below were calculated at \$45.00 per hour and represent the average hours for designation reports, meetings, and other activities as required by the Planning, Zoning and Building Department. Actual hours billed to the Town may vary and will be billed accordingly.

Research and Report Preparation: This figure includes time for research and writing of local designation reports, research into possible projects for the 2010/2011 season, and investigations into landmarking suggestions by Town Council members, Landmark Commissioners and the public. It also includes research into past actions when needed to defend current landmark status. At the present time only one designation hearing for 105 Banyan Road is being carried over from the 2009/2010 season. It is anticipated, however, that more designation reports (approximately ten or more) will be forthcoming next season because of the completion of the Historic Sites Survey and recommendations that follow the final report.

\$25,000.00

Planning: Meetings with staff, Landmarks Chairman, and Landmarks Commissioners. Landmarks Commissioners have at times requested and received one-on-one briefings and training with consultant. This also includes any time spent with Town Council Members.

\$ 7000.00

Town Council Meetings: \$ 1350.00

Landmarks Meetings: \$ 2250.00

Photography and Video: Although digital photography has replaced traditional methods, there are some occasions when it is necessary to copy and enhance historic photos for documentation and presentation.

\$ 250.00

Updating Existing Files: Continue to add additional historical research in order to enhance existing files and make them more legally defensible. The Landmarks Manual has been updated completing a goal set last season.

\$3,000.00

Supplies: This includes paper, copy work, color xeroxing and binding of reports.

\$2,000.00

Tax Abatement Support Work: As the Tax Abatement program in the Town grows, more staff time is needed for meetings with property owners and architects to ensure that the projects are meeting the Department of Interior Standards. Staff prepares the Resolutions that go to the Town Council, the Covenants that are signed by the property owners, and coordinates all material with Palm Beach County and the Tax Appraiser's Office. Site visits are also necessary to avoid problems with materials and follow through on the Certificates of Appropriateness. At the current time there is one project (last season there were five) in the process of obtaining Tax Abatement but I have spoken to two other property owners who are interested.

\$3,000.00

Site Visits and Landmarks Review: At the request of the Landmarks Commission, and the public, the consultant visits properties and evaluates projects of the Town's existing landmarks.

\$2,000.00

TOTAL: \$45,850.00

Jane S. Day
President

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 99-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$68,590 to Tree Huggers Landscaping and Nursery, LLC, for Grounds Maintenance Services, Establishing a Total Not-to-Exceed Budget of \$75,000 for Said Services, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works
- Resolution No. 99-10
- RFP Tab Sheet

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Award of Grounds Maintenance Contract
Resolution No. 99-10

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 99-10 awarding a contract to Tree Huggers Landscaping and Nursery, LLC, in the amount of \$68,590 for grounds maintenance services, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

RFP No. 201-14 Grounds Maintenance Services was publicly advertised and proposals were opened on May 12, 2010. Based on the proposals received and a review of references and qualifications, the Selection Committee recommends that the contract be awarded to Tree Huggers Landscaping and Nursery, LLC, in the amount of \$43,890, with optional contract extensions as allowed by the contract. A copy of the tabulation sheet is attached for reference.

Due to a reduction in department staff, additional services will be required throughout the year that were not quoted in the original bid. These additional services include miscellaneous landscape labor; plant installation; mulching and fertilizing; and installation and replacement of sod. These additional services are estimated in the amount of \$24,700. We anticipate the combined periodic maintenance and additional services will require a total budget of \$75,000, including contingency.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works Department FY2011 budget to complete this work.

TOWN ATTORNEY REVIEW

This item has been reviewed and approved by the Town Attorney as to form and legal sufficiency.

HPB:mrs

cc: Jane Struder, Director of Finance
Eric B. Brown, P.E., Assistant Director of Public Works
Ed Armstrong, Streets & Parks Supervisor
Lynda Venne, Purchasing Agent

RESOLUTION NO. 99-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT FOR \$68,590 TO TREE HUGGERS LANDSCAPING AND NURSERY, LLC, FOR GROUNDS MAINTENANCE SERVICES, ESTABLISHING A TOTAL NOT-TO-EXCEED BUDGET OF \$75,000 FOR SAID SERVICES, AND AUTHORIZING THE TOWN MANAGER TO TAKE ACTIONS NECESSARY TO COMPLETE SAID SERVICES.

* * * * *

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

Section 1. The Town of Palm Beach RFP No. 2010-14 for Grounds Maintenance Services is hereby awarded to Tree Huggers Landscaping and Nursery, LLC, in the amount of \$68,590;

Section 2. The Town Manager, or his designee, is hereby authorized and directed to execute the purchase order on behalf of the Town of Palm Beach for grounds maintenance with Tree Huggers Landscaping and Nursery, LLC, in the amount of \$68,590, with a total budget not-to-exceed \$75,000 for these services; and

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 grounds maintenance services.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 14th day of September, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

Description		A CUT ABOVE LANDSCAPE & MAINTENANCE SERVICES	FOREVER LAWN & LANDSCAPING, INC.	GIRARD ENVIRONMENTAL SERVICES, INC.	GREENSCAPE DESIGN, INC.	JERRY'S CUSTOM LANDSCAPING, INC.	LANDSCAPE SERVICE PROFESSIONALS, INC.	LUKES- SAWGRASS LANDSCAPE
Grounds Maintenance Services Total		\$ 128,690.00	\$ 44,150.00	\$ 42,479.00	\$ 84,415.00	\$ 45,020.00	\$ 32,690.00	\$ 42,616.54
Other Services	Miscellaneous Landscape Labor	\$ 17,500.00	\$ 7,500.00	\$ 15,000.00	\$ 8,750.00	\$ 5,250.00	\$ 12,500.00	\$ 12,500.00
	Sod Install only Price	\$ 750.00	\$ 300.00	\$ 5,500.00	\$ 25,000,000.00	\$ 50,000.00	\$ 1,000.00	\$ 2,000.00
	Sod Remove & Replace (Labor & Eqpt.)	\$ 1,500.00	\$ 950.00	\$ 4,500.00	\$ 15,000,000.00	\$ 25,000.00	\$ 1,750.00	\$ 3,750.00
	Sod: St. Augustine Floratam	\$ 4,200.00	\$ 1,950.00	\$ 4,500.00	\$ 56,250,000.00	\$ 75,000.00	\$ 3,000.00	\$ 8,250.00
	Sod: Bahia Grass	\$ 190.00	\$ 60.00	\$ 280.00	\$ 250,000.00	\$ 5,000.00	\$ 180.00	\$ 290.00
	Plant Install Labor Only 4 inch	\$ 1,500.00	\$ 5,000.00	\$ 4,000.00	\$ 4,250.00	\$ 7,500.00	\$ 5,000.00	\$ 2,150.00
	Plant Install Labor Only 1 gal.	\$ 625.00	\$ 625.00	\$ 750.00	\$ 750.00	\$ 2,250.00	\$ 625.00	\$ 500.00
	Plant Install Labor Only 3 gal.	\$ 562.50	\$ 500.00	\$ 1,250.00	\$ 1,125.00	\$ 2,125.00	\$ 812.50	\$ 500.00
	Plant Install Labor Only 7 gal.	\$ 500.00	\$ 250.00	\$ 900.00	\$ 1,100.00	\$ 1,350.00	\$ 700.00	\$ 300.00
	Plant Install Labor Only 15 gal.	\$ 500.00	\$ 162.50	\$ 900.00	\$ 1,250.00	\$ 925.00	\$ 750.00	\$ 250.00
	Mulching including labor and mulch as spec. (per CY)	\$ 29.75	\$ 15.00	\$ 40.00	nb	\$ 25.00	\$ 33.00	nb
	Fox Tail Palms on County Road (including labor and fertilizer as specified)	\$ 990.00	\$ 21,600.00	\$ 36,000.00	\$ 900.00	\$ 714.00	\$ 450.00	\$ 504.00
	Fertilize Turf at a rate of 1 lb of nitrogen per 1000 sf. Include Labor and Materials. Fertilizer Formula as specified	\$ 1.75	\$ 1.25	\$ 22.50	\$ 4,000.00	\$ 50.00	\$ 3,500.00	\$ 2,265.00
	Fertilize additional ornamental, flower beds and trees, include labor and materials. Fertilizer formula as specified	\$ 0.75	\$ 0.13	\$ 2.25	\$ 450.00	\$ 62.50	\$ 575.00	\$ 235.00

Description		MAINGUY LANDSCAPE SERVICES	NEXT ERA	SUNRISE HOME & GARDEN CORP.	SUNSHINE LAND DESIGN, INC.	TERRACON SERVICES, INC.	TREE HUGGERS LANDSCAPING & NURSERY, LLC
Grounds Maintenance Services Total		\$ 91,682.00	\$ 38,168.00	\$ 337,555.00	\$ 157,516.00	\$ 89,200.00	\$ 43,890.00
Other Services	Miscellaneous Landscape Labor	\$ 11,250.00	\$ 12,500.00	\$ 7,500.00	\$ 12,000.00	\$ 15,000.00	\$ 12,500.00
	Sod Install only Price	\$ 250,000.00	\$ 350.00	\$ 4,500.00	\$ 3,000.00	\$ 1,800.00	\$ 500.00
	Sod Remove & Replace (Labor & Eqpt.)	\$ 125,000.00	\$ 750.00	\$ 8,750.00	\$ 2,500.00	\$ 3,000.00	\$ 5,000.00
	Sod: St. Augustine Floratam	\$ 1,875,000.00	\$ 4,200.00	\$ 5,250.00	\$ 4,500.00	\$ 3,750.00	\$ 3,750.00
	Sod: Bahia Grass	\$ 100,000.00	\$ 230.00	\$ 150.00	\$ 240.00	\$ 220.00	\$ 250.00
	Plant Install Labor Only 4 inch	\$ 125,000.00	\$ 1,350.00	\$ 3,750.00	\$ 3,750.00	\$ 1,250.00	\$ 2,500.00
	Plant Install Labor Only 1 gal.	\$ 12,500.00	\$ 275.00	\$ 875.00	\$ 750.00	\$ 425.00	\$ 500.00
	Plant Install Labor Only 3 gal.	\$ 6,250.00	\$ 437.50	\$ 687.50	\$ 750.00	\$ 525.00	\$ 250.00
	Plant Install Labor Only 7 gal.	\$ 2,500.00	\$ 425.00	\$ 325.00	\$ 1,200.00	\$ 400.00	\$ 150.00
	Plant Install Labor Only 15 gal.	\$ 1,250.00	\$ 675.00	\$ 225.00	\$ 1,000.00	\$ 500.00	\$ 125.00
	Mulching including labor and mulch as spec. (per CY)	\$ 32.00	\$ 28.00	nb	\$ 42.00	\$ 29.50	\$ 30.00
	Fox Tail Palms on County Road (including labor and fertilizer as specified)	\$ 3,840.00	\$ 720.00	\$ 27,000.00	\$ 2,400.00	\$ 1,800.00	\$ 600.00
	Fertilize Turf at a rate of 1 lb of nitrogen per 1000 sf. Include Labor and Materials. Fertilizer Formula as specified	\$ 12,500.00	\$ 750.00	\$ 12.50	\$ 2,500.00	\$ 8,000.00	\$ 20,000.00
	Fertilize additional ornamental, flower beds and trees, include labor and materials. Fertilizer formula as specified	\$ 1,250.00	\$ 105.00	\$ 1.25	\$ 400.00	\$ 925.00	\$ 5,000.00

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 102-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting the 2009 Revised Unified Palm Beach County Local Mitigation Strategy Plan; Providing an Effective Date; and for Other Purposes.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated September 3, 2010, from Jay Boodheshwar, Director of Recreation and Special Projects
- Resolution No. 102-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects

Re: Adoption of Revised Palm Beach County Unified Local Mitigation Strategy Plan
Resolution No. 102-10

Date: September 3, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 102-10, adopting the revised Palm Beach County Unified Local Mitigation Strategy (LMS) plan.

GENERAL INFORMATION

This memorandum is to request adoption of the most recently revised Unified Local Mitigation Strategy (LMS) Plan - 2009. The adoption of Resolution No. 102-10 is required by the Federal Emergency Management Agency (FEMA) for the Town to be in compliance with the new federal guidelines introduced in response to the Disaster Mitigation Act of 2000. As described in Section 1.5 of the LMS Plan, adoption of the plan is required in order for Palm Beach County and participating municipalities, including the Town of Palm Beach, to be eligible to apply for and receive pre-disaster and post-disaster federal funding for mitigation purposes.

1.5 JURISDICTIONAL ADOPTION OF THE LMS

Adoption of the LMS is subject to the following FEMA requirements:

Requirement §201.6(c)(5): *The local hazard mitigation plan shall include documentation that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (e.g., City Council, County Commissioner, Tribal Council).*

Requirement §201.6(c)(5): *For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.*

Requirement §201.6(a)(3): *Multi-jurisdictional plans (e.g., watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process ... Statewide plans will not be accepted as multi-jurisdictional plans.*

All jurisdictions wishing to participate in and share in the benefits deriving from the LMS program must complete and file a fully executed resolution (see Appendix H) which conforms to the adoption standards jointly established and amended by the Palm Beach County Board of County Commissioners and the LMS Steering Committee. Resolutions

TOWN ATTORNEY REVIEW

This is a standard resolution in a form previously approved by the Town Attorney for legal form and sufficiency.

cc: Department Directors
Karen Temme, Risk Manager
Michael Galvin, EOC Coordinator

RESOLUTION NO. 102-10

**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF PALM BEACH, PALM BEACH COUNTY,
FLORIDA, ADOPTING THE 2009 REVISED UNIFIED
PALM BEACH COUNTY LOCAL MITIGATION
STRATEGY PLAN; PROVIDING AN EFFECTIVE DATE;
AND FOR OTHER PURPOSES.**

* * * * *

WHEREAS, Palm Beach County and its 38 municipalities, worked together to revise the multi-jurisdictional strategy known as the Unified Local Mitigation Strategy Plan to create a more disaster resistant community; and

WHEREAS, the Federal Disaster Mitigation Act of 2000 (DMA2000) and the Federal Emergency Management Agency (FEMA) require communities to adopt a hazard mitigation plan in order to be eligible to receive pre-disaster and post-disaster federal funding for mitigation purposes; and

WHEREAS, Palm Beach County and its 38 municipalities have participated in the Unified Local Mitigation Strategy (LMS) program since its inception in 1999 and a majority of the municipalities approved an Interlocal Agreement with Palm Beach County concerning the LMS program (the “LMS Interlocal”); and

WHEREAS, the County and its 38 municipalities coordinated a public process to revise and amend the Unified LMS plan to bring it into full compliance with federal guidelines; and

WHEREAS, Palm Beach County’s Revised LMS plan was reviewed and approved by FEMA and the Florida Department of Community Affairs contingent upon the inclusion of mutually acceptable changes and the adoption of same by the Palm Beach County and the municipalities; and

WHEREAS, the LMS Steering Committee recommends the formal adoption of the Revised LMS plan by resolution pursuant to the terms of the LMS Interlocal.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF PALM BEACH, FLORIDA, THAT:**

Section 1. The Town of Palm Beach hereby approves and adopts the Revised 2009 Unified Local Mitigation Strategy Plan in its entirety, as revised and approved by the Local Mitigation Steering Committee (the “Revised LMS Plan”) and agrees to be governed by the Revised LMS Plan on file in the Town Manager’s Office; and, as applicable, further agrees to be governed by the Revised LMS Plan which shall hereafter amend any LMS Interlocal agreements previously approved by the Town of Palm Beach.

Section 2. The Town of Palm Beach authorizes the appropriate Town of Palm Beach Officials to pursue available funding opportunities for implementation of proposals designated therein, and will, upon receipt of such funding or other necessary resources, seek to implement the actions contained in the mitigation strategies.

Section 3. The Town of Palm Beach will continue to participate in the multi-jurisdictional LMS planning process, including reporting of progress as required by FEMA, the Florida Department of Community Affairs, and the LMS Steering Committee.

Section 4. The Town Council directs the Clerk to transmit an original of the executed Resolution to the Palm Beach County Division of Emergency Management, attention Senior Mitigation Planner, to be forwarded for filing in the Office of the Circuit Court.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 106-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Purchase and Installation of a Harris Cell Site Antenna System Based upon a Quote from Citation Communications in the Amount of \$41,167 to Provide Essential Police and Fire-Rescue Radio Coverage the Southern Area of the Town and Authorizing the Town Manager or the Town Managers' Designee to Execute Any Documents Necessary to Effectuate Said Purchase and Installation.

Presenter

Kirk Blouin, Chief of Police

Supporting Documents

- Memorandum dated September 1, 2010, from Kirk W. Blouin, Police Chief
- Res. No. 106-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Kirk W. Blouin, Chief of Police

Re: Authorization to Purchase Palm Beach Police and Fire Rescue Radio Antenna System
Resolution No. 106-10

Date: September 1, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Resolution No. 106-10 authorizing the purchase of an antenna system to be installed on the Ambassador South Condominium, 2774 South Ocean Boulevard, Palm Beach, Florida for the purpose of providing critical and essential Police and Fire Rescue communications at the south end of the Town.

BOARD OR COMMISSION RECOMMENDATION

Staff made an informal presentation to the ARCOM board at their August 25, 2010, meeting at which time the Board indicated their intent to give formal approval of the project at the September meeting. Staff will make the formal presentation to the ARCOM Board Members on September 22, 2010. Staff has received written approval for this project from the Ambassador South Development Corporation, 2774 South Ocean Blvd., Palm Beach, Florida, dated August 24, 2010.

GENERAL INFORMATION

- After being denied access to the county radio system over a decade ago, the Town along with other municipalities embarked on a search for a new radio system with the creation of the Municipal Public Safety Communications Consortium (MPSCC).
- The Town of Palm Beach is a Charter Member Agency of the MPSCC, which also includes the City of Palm Beach Gardens, City of West Palm Beach, Village of Atlantis, Town of Jupiter and Town of Juno Beach. The Palm Beach County School Board Police and other municipalities are expected to join in the very near future.
- The purpose of the MPSCC is to provide a high performance radio network to support its members.
- The Harris Open Sky radio system has been in full-time use by the Palm Beach Police Department since April 15, 2010.
- During testing, coverage deficiencies were identified in the area south of Sloan's Curve

- to the southern town limit. These deficiencies could not have been anticipated and funding was not budgeted for this type of infrastructure upgrade.
- Currently there are some “dead spots” in the south end of town where communication transmissions to and from public safety units are unreliable. It has been determined that a strategically placed low profile/low power “Cell Site” would satisfactorily provide the signal strength needed in this area of town.
 - The Harris Open Sky Digital Radio System is the platform of choice by the Municipal Public Safety Communications Consortium (MPSCC).

FUNDING/FISCAL IMPACT

The project includes the Harris Cell Site, 4.9 GHZ Back-Haul, antenna and installation at the Ambassador South Condominium at a cost of \$41,167, which will be paid from existing funds in the Police Department’s FY10 budget made available through cost saving initiatives that have reduced operating expenses and capital equipment replacements within the department.

SPECIAL CONSIDERATIONS

The vendor for the project, Citation Communications, is the sole vendor for the entire Open Sky, MA-Comm radio project and is approved by the Municipal Public Safety Communications Consortium (MPSCC).

TOWN ATTORNEY REVIEW

The resolution has been reviewed by the Town Attorney and approved as to form and legal sufficiency.

Attachments

KWB:rh

cc: Bill Amador, Fire Rescue Chief
Jane Struder, Director of Finance
Hugh Murrill, Citation Communications

RESOLUTION NO. 106-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE PURCHASE AND INSTALLATION OF A HARRIS CELL SITE ANTENNA SYSTEM BASED UPON A QUOTE FROM CITATION COMMUNICATIONS IN THE AMOUNT OF \$41,167 TO PROVIDE ESSENTIAL POLICE AND FIRE RESCUE RADIO COVERAGE IN THE SOUTHERN AREA OF THE TOWN AND AUTHORIZING THE TOWN MANAGER OR THE TOWN MANAGER'S DESIGNEE TO EXECUTE ANY DOCUMENTS NECESSARY TO EFFECTUATE SAID PURCHASE AND INSTALLATION

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

Section 1. The Town of Palm Beach Police Department is hereby authorized and directed to purchase from Citation Communications a Harris Cell Site Antenna System to include all necessary components (4.9 GHZ Back-Haul, Antenna and Installation) and install at the Ambassador Condominium, 2774 South Ocean Boulevard, Palm Beach, Florida, via the Municipal Public Safety Communications (MPSCC) approved vendor, Citation Communications, in the amount of \$41,167.

Section 2. The Town Manager or the Town Manager's designee is hereby authorized and directed to execute the purchase order on behalf of the Town of Palm Beach for the purchase and installation of the Harris Cell Site Antenna System in the amount of \$41,167 and to take any further actions necessary to effectuate said purchase and installation.

**PASSED AND ADOPTED IN A REGULAR, ADJOURNED SESSION OF THE
TOWN COUNCIL OF THE TOWN OF PALM BEACH THIS 14TH DAY OF
SEPTEMBER, 2010.**

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro-Tem

William J. Diamond, Town Council Member

ATTEST

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NUMBER 108-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Designating Town Depositories for Fiscal Year 2011 Pursuant to Section 2-517 of the Town Code of Ordinances and Designating Parties to Sign Checks or Warrants on Behalf of the Town Pursuant to Section 2-36 of the Town Code of Ordinances.

Presenter

Jane Struder, Director of Finance

Supporting Documents

- Memorandum Dated September 3, 2010, from Jane Struder, Finance Director
- Resolution No. 108-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jane Struder, Finance Director

Re: Designation of Town Depositories and Parties Authorized to Sign
Checks or Warrants on Behalf of the Town for Fiscal Year 2011
Resolution No. 108-10

Date: September 3, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Resolution No.108-10 designating the Town depositories and authorized parties to sign checks and warrants on behalf of the Town for fiscal year 2011.

GENERAL INFORMATION

Pursuant to sections 2-36 and 2-517 of the Town of Palm Beach Code of Ordinances, the Town Council must annually designate Town depositories and authorized parties to sign checks and warrants on behalf of the Town.

TOWN ATTORNEY REVIEW

Town Attorney review is not necessary for this resolution since it is the standard resolution used every year and was previously approved by the Town Attorney.

js

RESOLUTION NUMBER 108-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING TOWN DEPOSITORIES FOR FISCAL YEAR 2011 PURSUANT TO SECTION 2-517 OF THE TOWN CODE OF ORDINANCES AND DESIGNATING PARTIES TO SIGN CHECKS OR WARRANTS ON BEHALF OF THE TOWN PURSUANT TO SECTION 2-36 OF THE TOWN CODE OF ORDINANCES.

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

Section 1. Pursuant to Section 2-517 of the Town Code of Ordinances, the Town Council hereby designates the following financial institutions as depositories for Fiscal Year 2011:

- 1) Wachovia Bank, N.A. A Division of Wells Fargo Company (Checking, Retirement, Risk Claims, Money Market, Parking Kiosk, Merchant and Custody Accounts)
- 2) Florida League of Cities (Excess Funds)
- 3) PFM Asset Management LLC (Excess Funds)
- 4) State Street Bank (Custody Account)
- 5) TD Wealth Management (Custody Account)

Section 2. Pursuant to Section 2-36 of the Town Code of Ordinances, funds may be withdrawn from the Town's bank accounts referenced in Section 1, upon checks, warrants, or wire transfers duly signed by the Town Manager and the Town's Finance Director.

In the absence of or as may be designated by the Town Manager, the Deputy Town Manager may sign checks, warrants, or wire transfers in the place and instead of the Town Manager.

In the absence of or as may be designated by the Finance Director, the Assistant Finance Director or the Accounting Supervisor may sign checks, warrants, or wire transfers in the place and instead of the Finance Director.

The Town Manager and Deputy Town Manager are not authorized to countersign each other's signatures; nor are the Finance Director, the Assistant Finance Director, and the Accounting Supervisor authorized to countersign each other's signatures.

Section 3. To open a new account, all current authorized account signatures will sign the appropriate paperwork. To close an existing account, the financial institution will be notified by letter signed by the Finance Director or Town Manager.

Section 4. The Town Clerk is hereby directed to furnish a certified copy of this Resolution to Wachovia Bank, N.A. A Division of Wells Fargo Company, Florida League of Cities, N.A., PFM Asset Management LLC, TD Wealth Management and State Street Bank.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Extend Air Conditioning Contract for FY11 in an Amount Not-to-Exceed \$40,000.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization to Extend Air Conditioning Contract

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council authorize the second twelve month extension of the Air Conditioning contract with John C. Cassidy Air Conditioning, in the amount of \$21,000, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

John C. Cassidy Air Conditioning was awarded the Air Conditioning contract RFP No. 2008-19 on August 27, 2008, and has performed satisfactorily. The maintenance component of this contract was originally awarded in the amount of \$18,840 for the base year. It has been adjusted to include Recreation. The contract provides for the option of (3) twelve month renewals with all original terms, conditions and pricing.

Based on historical repairs, this purchase order will eventually exceed the \$25,000 threshold for Council approval. We anticipate that the combined maintenance and repair expense will be on the order of \$35,000 to \$40,000 and have budgeted accordingly. Therefore, an overall budget of \$40,000 is established, and repairs may be authorized up to that amount as needed.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works budget for FY2011 to complete this work.

TOWN ATTORNEY REVIEW

This is a standard item in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

cc: Jane Struder, Finance Director
Eric B. Brown, Assistant Director of Public Works/Operations
Lynda Venne, Purchasing Agent
Michael Olbrych, General Maintenance Supervisor

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Extend Compacted Garbage Collection Contract for FY11 at a Cost of \$236,714.55.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization to Extend Compacted Garbage Collection Contract

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council authorize the second twelve month extension of the Compacted Garbage Collection Contract with Waste Management, Inc., in the amount of \$236,714.55, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

Waste Management, Inc. was awarded the Compacted Garbage Collection Contract, Bid No. 2008-28 on October 1, 2008, and has performed satisfactorily for the past year. The contract provides for the option of (4) twelve month renewals with all original terms, conditions and pricing.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works budget for FY2011 to complete this work. The cost of this contract is reimbursed 100% by the customers who receive this service, resulting in no out-of-pocket cost to the Town's taxpayers.

TOWN ATTORNEY REVIEW

This is a standard item in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

cc: Jane Struder, Finance Director
Eric B. Brown, Assistant Director of Public Works/Operations
Larry Iverson, Services Division Manager
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Extend Janitorial Services Contract for FY11 at a Cost of \$118,200.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works.

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization to Extend Janitorial Services Contract

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council authorize the second twelve month extension of the Janitorial Services contract with GCC Commercial Cleaning, in the amount of \$118,200.

GENERAL INFORMATION

GCC Commercial Cleaning was awarded the Janitorial Services Contract, RFP No. 2008-12 on September 8, 2008, and has performed satisfactorily for the past twelve months. The contract provides for the option of four (4) twelve month renewals with all original terms, conditions and pricing.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works budget for FY2011 to complete this work.

TOWN ATTORNEY REVIEW

This is a standard item in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

Attachment

cc: Jane Struder, Finance Director
Eric B. Brown, Assistant Director of Public Works/Operations
Michael Olbrych, General Maintenance Supervisor
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Extend Hedge Trimming Contract for FY11 at a Cost of \$46,479.60.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization to Extend Hedge Trimming Contract

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council authorize the third twelve month extension of the Hedge Trimming Maintenance Contract with Elan Lawn & Landscape Service, Inc., in the amount of \$46,479.60, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

Elan Lawn & Landscape Services, Inc. was awarded the Hedge Trimming Maintenance Contract, Bid No. 2008-05 on February 13, 2008, and has performed satisfactorily for the twelve months. The contract was originally awarded in the amount of \$41,500 for the base year, and adjusted in the amount of \$46,479.60, to include recreation and tennis facilities at Phipps Ocean Park. The contract provides for the option of (4) twelve month renewals with all original terms, conditions and pricing.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works budget for FY2011 to complete this work.

TOWN ATTORNEY REVIEW

This is a standard item in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

cc: Jane S. Struder, Finance Director
Eric B. Brown, Assistant Director of Public Works/Operations
Ed Armstrong, Streets & Parks Supervisor
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Extend Lethal Yellowing Contract for FY11 at a Cost of \$37,775.25.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization to Extend Lethal Yellowing Contract

Date: September 2, 2010

STAFF RECOMMENDATION

Town staff recommends that Town Council authorize the second twelve month extension of the Lethal Yellowing Inoculations contract with Community Tree & Landscaping, in the amount of \$37,775.25, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

Community Tree & Landscaping was awarded the Lethal Yellowing Inoculations contract, Bid No. 2008-22 on September 10, 2009, and has performed satisfactorily. The contract was originally awarded in the amount of \$33,741 for the base year, and has been adjusted to the amount of \$37,775.25, to include additional trees at the Par 3 Golf Course, and the Worth Avenue improvement project. The contract provides for the option of (4) twelve month renewals with all original terms, conditions and pricing.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works Department FY 2011 Budget to complete this work.

TOWN ATTORNEY REVIEW

This is a standard item in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

Attachment

cc: Jane Struder, Director of Finance
Eric B. Brown, Assistant Director of Public Works/Operations
Ed Armstrong, Streets & Parks Supervisor
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Extend Street Sweeping Contract for FY11 at a Cost of \$113,206.56.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization to Extend Street Sweeping Contract

Date: September 2, 2010

STAFF RECOMMENDATION

Town staff recommends Council authorize the third twelve month extension of the Street Sweeping contract with All American Sweeping, Inc., in the amount of \$113,206.56, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

All American Sweeping, Inc. was awarded the street sweeping service contract, Bid No. 2007-20, on September 8, 2007, and has performed satisfactorily. The original contract was awarded in the amount of \$109,973 for the base year, and adjusted in 2008 to the current amount. The contract provides for the option of (4) twelve month renewals with all original terms, conditions and pricing.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works Department FY 2011 Budget to complete this work.

TOWN ATTORNEY REVIEW

This is a standard item in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

Attachment

cc: Jane Struder, Director of Finance
Eric B. Brown, Assistant Director of Public Works/Operations
Ed Armstrong, Streets & Parks Supervisor
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Extend Turf Maintenance Contract for FY11 at a Cost of \$60,349.92.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization to Extend Turf Maintenance Contract

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council authorize the third twelve month extension of the Turf Maintenance contract with Marc & Sons Landscape & Tree Services, LLC, in the amount of \$60,349.92, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

Marc & Sons Landscape & Tree Services, LLC, was awarded the Turf Maintenance contract Bid No. 2008-03 on February 13, 2008, and has performed satisfactorily for the past year. The contract provides for the option of (4) twelve month renewals with all original terms, conditions and pricing. The contract was awarded for \$44,565.20. Additional Town areas were added to be serviced due to the reduction of in house staffing, resulting in a revised amount of \$60,349.92.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Public Works budget for FY2011 to complete this work.

TOWN ATTORNEY REVIEW

This is a standard item in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

cc: Jane Struder, Finance Director
Eric B. Brown, Assistant Director of Public Works/Operations
Ed Armstrong, Streets & Parks Supervisor
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Approval of Selection Committee for Environmental and Geotechnical Services.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Approval of Selection Committee for Environmental and Geotechnical Services

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve the selection team identified below and direct staff, as authorized under the Florida States, Chapter 287.055, known as the Consultants Competitive Negotiation Act (CCNA), to receive qualifications from interested consultants, to short list, to conduct consultant interviews, and to return to Town Council with a recommendation to enter into a contract with the selected consultant(s).

GENERAL INFORMATION

Town staff is recommending that Town Council authorize staff to issue a request for qualifications to environmental and geotechnical consultants so a qualified consultant can be established. This consultant will be utilized for environmental and geotechnical projects funded by the Town Council, including but not limited to site assessments, sampling and testing, and permit applications.

The CCNA process includes establishing a review team that evaluates the qualifications submitted by the consultants that express an interest in the project. In accordance with Town Procedure No. 2-89-2, the Council may defer to a Selection Team consisting of the following members:

1. The Public Works Committee Chairperson: Gail Coniglio, Town Council President Pro Tem
2. The Town Manager's Designee: Jay Boodheshwar, Director of Recreation
3. The Public Works Director's Designee: H. Paul Brazil, Director of Public Works
4. Another individual as deemed appropriate by the Town Manager: Eric B. Brown, Assistant Director of Public Works

In addition, Finance/Purchasing staff will oversee and assist with the Selection Team's review process.

FUNDING/FISCAL IMPACT

There is no fiscal impact associated with this approval. Council will be asked to approve specific tasks to be performed by the successful consultant as required. Funds have been budgeted for these identified tasks.

HPB:mrs

cc: Jane Struder, Director of Finance
Cheryl Somers, Assistant Director of Finance
Eric B. Brown, P.E., Assistant Director of Public Works
Lynda Venne, Purchasing Agent
Selection Team Members
Larry Iverson, Services Manager

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Appointment to "Blue Ribbon" Panel per PERC Ordinance Appendix "A" Section 1.003

Presenter

Danielle Olson, Director of Human Resources

Supporting Documents

- Memorandum dated September 3, 2010 from Danielle Olson, Director of Human Resources

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Danielle Olson, Director of Human Resources

Re: Appointment to "Blue Ribbon" Panel per PERC Ordinance Appendix "A" Section 1.003

Date: September 3, 2010

STAFF RECOMMENDATION

Staff recommends Town Council appoint a "blue ribbon" panel, consisting of the chairman of the Citizens Association of Palm Beach and the president of the Palm Beach Civic Association (or their designees). It will be the responsibility of the "blue ribbon" panel to recommend one or more qualified individuals for appointment to the Town's Public Employees Relations Commission (PERC). That appointment will be made by the Town Council at its meeting of October 12, 2010.

GENERAL INFORMATION

Mr. Peter Graves' term as "Employee Representative" on the PERC expires October 2010. According to the Town's Code of Ordinances, Appendix A. Section 1.003, the Public Employees Relations Commission shall be composed of a chairman and two other members to be appointed by the Town Council from a list of persons submitted by an independent "blue ribbon" panel appointed by Town Council. Staff will advise the panel that Mr. Graves' has expressed a desire to be considered for another four-year term.

It has been the past practice of the Town Council to appoint the chairman of the Citizens Association of Palm Beach and the president of the Palm Beach Civic Association (or their designees) to form the "blue ribbon" panel. The task for the "blue ribbon" panel will be to submit one or more qualified individuals for appointment by the Town Council as the Employee Representative on the PERC. If Town Council approves moving forward in the usual manner, this year's "blue ribbon" panel would be comprised of Ned Barnes, president of the Palm Beach Civic Association and Jimmy Ryan, chairman of the Citizens Association of Palm Beach. If Town Council desires a new method regarding the formation of the "blue ribbon" panel, please pull this item from consent on September 14, 2010, and provide staff with additional direction.

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Approval of Contingency Allocation for Legal Expenses and Compensated Absences.

Presenter

Jane Struder, Director of Finance

Supporting Documents

- Memorandum Dated September 3, 2010, from Jane Struder, Finance Director

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jane Struder, Finance Director

Re: General Fund Contingency Allocation for Legal Fees and Compensated Absence Payouts

Date: September 3, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council authorize appropriations from the General Fund Contingency Account for legal fees (\$120,000) and compensated absence payouts for terminated employees (\$250,000) for a total of (\$370,000).

GENERAL INFORMATION

As previously indicated in the monthly Revenue and Expenditure reports, the budgets for legal fees and compensated absence payouts for employees separated from Town employment were predicted to exceed budget estimates. The Advice and Legal program is estimated to be over budget at September 30, 2010, by approximately \$120,000 due primarily to higher than expected costs for labor union negotiations, special investigations, and employee grievance hearings, as well as to the legal services related to the ORS Committee's complete review and update of the Town Code of Ordinances. Compensated absence payouts for terminated employees are expected to exceed the budget by \$250,000 due to the higher than anticipated number of employees that separated from Town employment in FY10. To date there have been 31 employees that separated from Town employment during FY10, of which 16 were retirements.

FUNDING/FISCAL IMPACT

The above will require a \$370,000 allocation from the General Fund Contingency Account. The current balance in the General Fund Contingency is \$617,750. At year end, the additional allocation for compensated absence payouts will be deducted from the amount of General Fund balance reserved for that purpose, thereby replenishing the undesignated General Fund balance.

jls

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Renew Par 3 Labor Contract for FY11 at a Cost Not-to-Exceed \$161,500.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated September 3, 2010, from Jay Boodheshwar, Director of Recreation and Special Projects

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects

Re: Authorization to Renew Agreement for Contractual Labor Services

Date: September 3, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council authorize a twelve month renewal of the Contractual Labor Service Agreement with Adil Business Systems Inc., in an amount not to exceed \$161,500, contingent upon approval of the FY2011 operating budget.

GENERAL INFORMATION

Adil Business Systems, Inc. was awarded the Contractual Labor Services Contract, Bid No. 2009-22, on September 9, 2009, and has performed satisfactorily during the first 12 month contract period. Staff recommends the continuation of using contract labor to properly maintain the golf course to the high standard necessary to increase play volume. It has proven advantageous to procure labor services for this purpose from a third party provider, such as Adil Business Systems, instead of hiring additional employees for several reasons, including greater flexibility in scheduling, cost savings from benefits, and cost savings associated with staff turnover.

The proposed contractual labor services will be used primarily at the Par 3 Golf Course. Other Town departments will also have access to this pool of labor when necessary.

FUNDING/FISCAL IMPACT

Sufficient funds are available in the proposed Golf Course budget for FY2011 to fund this contract.

cc: Paul Brazil, Director of Public Works
Jane Struder, Director of Finance
John C. Randolph, Town Attorney
Alan Brown, Assistant Director of Recreation
Tim Campbell, Superintendent
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Board/Commission Annual Report

Agenda Title

Firefighters' Retirement Board of Trustees. [Wilbur Ross, Chair and William Hanes, Pension Administrator]

Presenter

Wilbur Ross, Chair, and William Hanes, Pension Administrator

Supporting Documents

- Memorandum dated September 2, 2010, from William Hanes, Plan Administrator for the Firefighter Board of Trustees
- Memorandum dated September 2, 2010, from Wilbur Ross, Chair of the Firefighter Board of Trustees
- Derivation of Funding Value of Retirement System Assets from the Annual Actuarial Valuation Report for year Ending September 30, 2009
- Unfunded Actuarial Accrued Liability from the Annual Actuarial Valuation Report for Year Ending September 30, 2009
- Investment Manager Returns for the Periods Ended June 30, 2010, provided by Prime Buchholz (Investment Consultant)
- Asset Allocation, provided by Prime Buchholz

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: William Hanes, Plan Administrator for the Firefighter Board of Trustees

Re: Annual Report of the Firefighter Retirement Board of Trustees

Date: September 2, 2010

GENERAL INFORMATION

The attached memorandum and status reports are being provided to the Mayor and Town Council from Mr. Wilbur Ross, as chairman of the Firefighter Board of Trustees. The information relates to the pension fund's unfunded liabilities and investment performance.

Attachments:

- Letter from Mr. Wilbur Ross, Chair
- Derivation of Funding Value of Retirement System Assets from the Annual Actuarial Valuation Report for year Ending September 30, 2009
- Unfunded Actuarial Accrued Liability from the Annual Actuarial Valuation Report for Year Ending September 30, 2009
- Investment Manager Returns for the Periods Ended June 30, 2010, provided by Prime Buchholz (Investment Consultant)
- Asset Allocation, provided by Prime Buchholz

TOWN OF PALM BEACH RETIREMENT SYSTEM FIREFIGHTER BOARD OF TRUSTEES

Wilbur Ross, Chairman
Michael Hays, Chairman Pro Tem
Jayson French, Secretary

Sergio de Araujo
Carol Rathbone

September 2, 2010

Mayor and Members of Town Council
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: Firefighter Board of Trustees
Town of Palm Beach Retirement System

Dear Mayor and Council Members:

Matters of the Town's pensions are of major importance to many stakeholders, including Mayor McDonald and Town Council, the residence and taxpayers, and the Firefighters for whom the plans were established. It is my pleasure to present to you on behalf of the Firefighter Board of Trustees important highlights of the past year regarding matters of the Firefighter's pension plan.

It was decided that the three plans present the written material to you in a similar format, and so my remarks are supported by the agreed upon written material from the most recent September 30, 2010 annual actuarial report and the June 30, 2010 quarterly investment report.

Actuarial Report

- Brad Armstrong, GRS, reported at the May 21, 2010 meeting that eight percent (8%) continues to be an appropriate long term return assumption for the plan. Sean Higman, Prime Buchholz, stated at the May 21, 2010 meeting his agreement with Mr. Armstrong.
- The plan's actuarial funding level has been reduced from 80.3% to 74.0% from September 30, 2008 to September 30, 2009. The current funding level based on market valuation is 61.7%.
- The plan carries unrecognized losses of \$9 million from past market losses. (see Derivation of Funding chart)

- The Board has reviewed matters of the non-investment cash flow experiences of the plan with the actuary and investment consultant at the May 21, 2010 quarterly board meeting.
- The Board reviewed matters of GASB preliminary views with the actuary at the most recent August 20, 2010 quarterly meeting of the board.

Investment Report

- The fund's allocation to International Equities was increased in response to a change in state statute, allowing for total investment in foreign securities totaling 25% (from 10%). Current allocation is 16%.3%.
- The board adopted a change to provide a 5% allocation to Global Private Equity. The Board believes private equity will result in increased diversification and a slight increase in expected return. The change reflects a continuous effort to manage portfolio risk through diversification.
- The board reviews with the Investment Consultant matters of the plan's investment allocation at each quarterly board meeting. The Board recently interviewed firms in order to add an active managed real asset fund. Gresham Investment Management was hired.
- The board adopted a change to the Investment Policy to include the requirements under state law to effect divestiture of securities of companies doing business with certain state identified terrorist countries (Sudan/Iran).
- The plan achieved a total annual fund return of 10.1% as of June 30, 2010. The annual return for July, 31, 2010 was 9.7%.

Other Matters

- The Board reviewed matters of the consultant's report at several meetings with the consulting firm of Cavanaugh, McDonald.
- The Board approved a recommendation to Town Council that trustees serve two year staggering terms of office.
- The Chapter 175 report has been approved by the State Department of Retirement, and the Firefighter plan has received a first check for \$503,289.23.

I look forward to presenting matters of the Board to you at the Town Council meeting on Tuesday, September 14, 2010, and to answer any questions you may have at that time.

Sincerely, 
Wilbur Ross, Chairman

Derivation of Funding Value of Retirement System Assets

Year Ended September 30:	2008	2009	2010	2011	2012
A. Funding Value Beginning of Year	\$54,722,895	\$57,652,278			
B. Market Value End of Year	49,729,313	48,209,802			
C. Market Value Beginning of Year	57,916,949	49,729,313			
D. Non-Investment Net Cash Flow	33,162	(651,462)			
E. Investment Income					
E1. Market Total: B - C - D	(8,220,798)	(868,049)			
E2. Amount for Immediate Recognition at 8.0%	4,379,158	4,586,124			
E3. Amount for Phased-In Recognition: E1 - E2	(12,599,956)	(5,454,173)			
F. Phased-In Recognition of Investment Income					
F1. Current Year: 0.20 x E3	(2,519,991)	(1,090,835)			
F2. First Prior Year	573,963	(2,519,991)	\$ (833,678)		
F3. Second Prior Year	104,803	573,963	(2,519,991)	\$ (833,678)	
F4. Third Prior Year	225,510	104,803	573,963	(2,519,991)	\$ (833,678)
F5. Fourth Prior Year	132,778	225,508	104,802	573,961	(2,519,992)
F6. Adjustment to Recognize 20% Corridor	<u>0</u>	<u>(1,028,626)</u>	<u>0</u>	<u>0</u>	<u>0</u>
F7. Total Recognized Investment Gain/(Loss)	(1,482,937)	(3,735,178)	(2,674,904)	(2,779,708)	(3,353,670)
G. Accelerated Recognition of Investment Income	0	0	0	0	0
H. Funding Value End of Year: A + D + E2 + F7 Not to Exceed 120% of Market Value	57,652,278	57,851,762			
I. Difference between Market & Funding Value	(7,922,965)	(9,641,960)			
J. Recognized Rate of Return	5.29%	1.48%			
K. Recognized Rate of Investment Expenses	0.52%	0.26%			

The Funding Value of Assets recognizes assumed investment income (line E2) fully each year. Differences between actual and assumed investment income (line E3) are phased in over a closed 5-year period. During periods when investment performance exceeds the assumed rate, the Funding Value of Assets will tend to be less than Market Value. During periods when investment performance is less than the assumed rate, the Funding Value of Assets will tend to be greater than Market Value. If assumed rates are exactly realized for 4 consecutive years, it will become equal to Market Value.

**Unfunded Actuarial Accrued Liability
as of September 30**

	<u>2009</u>	<u>2008</u>
A. Actuarial present value of future benefits	\$94,407,576	\$86,013,073
B. Actuarial present value of future normal costs	16,268,545	14,200,258
C. Actuarial accrued liability	78,139,031	71,812,815
D. Actuarial value of assets	57,851,762	57,652,278
E. Unfunded actuarial accrued liability	20,287,269	14,160,537
F. Funded ratio	74.0%	80.3%

Executive Summary

Town of Palm Beach

Firefighters Retirement System

Executive Summary as of June 30, 2010

Assets Market Value	% of Portfolio		{-----Quarter Ending-----}				{-----Period Ending Jun-2010-----}					{-----Inception-----}		
			Sep-09	Dec-09	Mar-10	Jun-10	Fiscal YTD	Calendar YTD	1 YR	3 YRS	5 YRS	10 YRS	Return	Since
\$49,981,969	100.0	Total Fund	8.9	3.5	2.6	-4.7	1.2	-2.3	10.1	-4.6	2.0	3.1	7.3	Mar-91
		Target Index	10.1	2.9	2.3	-5.9	-1.0	-3.8	9.0	-5.5	1.2	2.1	7.2	Mar-91
		Actual Index	9.2	2.4	2.1	-5.8	-1.4	-3.8	7.6	-4.8	1.9	2.8	8.8	Mar-91
		60% S&P 500 Index /40% BC Aggregate Index	10.8	3.7	4.0	-5.6	1.8	-1.8	12.8	-2.7	2.0	1.9	7.6	Mar-91
		Consumer Price Index	0.1	0.0	0.8	0.4	1.1	1.2	1.3	1.6	2.4	2.4	2.5	Mar-91
\$17,219,374	34.5	Global Equity	16.2	5.1	3.6	-10.4	-2.5	-7.2	13.3	-10.3	-0.2	0.1	9.3	Mar-91
\$9,054,595	18.1	Domestic Equity	15.3	6.0	5.4	-9.5	1.1	-4.6	16.6	-9.5	-0.6	-0.4	9.0	Mar-91
		Russell 3000 Index	16.3	5.9	6.0	-11.3	-0.5	-6.0	15.7	-9.5	-0.5	-0.9	7.8	Mar-91
\$1,997,165	4.0	SSgA S&P 500 Flagship NL Fund	15.6	6.0	5.4	-11.4	-1.0	-6.7	14.4	-9.8	-0.8	-1.6	7.3	Dec-94
		S&P 500 Index	15.6	6.0	5.4	-11.4	-1.0	-6.7	14.4	-9.8	-0.8	-1.6	7.3	Dec-94
\$2,245,364	4.5	Stratlem & Company Large Cap Core Account	14.8	6.4	3.2	-8.9	0.0	-6.0	14.8	-5.0	NA	NA	0.1	Mar-06
		S&P 500 Index	15.6	6.0	5.4	-11.4	-1.0	-6.7	14.4	-9.8	-0.8	-1.6	-3.3	Mar-06
\$1,624,346	3.2	SSgA S&P Midcap NL Index	20.0	5.5	9.0	-9.7	3.9	-1.5	24.7	NA	NA	NA	-8.1	Jun-08
		S&P Midcap Index	20.0	5.6	9.1	-9.6	4.1	-1.4	24.9	-5.9	2.2	5.3	-7.9	Jun-08
\$1,504,354	3.0	CRM Midcap Value Instl Fund	13.0	5.2	5.1	-11.7	-2.3	-7.1	10.4	NA	NA	NA	-10.2	Jun-08
		Russell Midcap Value Index	23.6	5.2	9.6	-9.6	4.3	-0.9	28.9	-9.4	0.7	7.6	-7.6	Jun-08
\$1,683,366	3.4	Geneva Mid Cap Equity Account	13.5	7.7	5.4	-5.9	6.8	-0.8	21.2	-2.7	NA	NA	3.0	Aug-05
		Russell Midcap Growth Index	17.6	6.7	7.7	-10.2	3.2	-3.3	21.3	-7.5	1.4	-2.0	0.4	Aug-05
\$8,164,779	16.3	International Equity	23.1	3.3	1.7	-11.4	-6.9	-9.9	14.6	-9.6	3.7	NA	9.0	Dec-02
		MSCI EAFE Net Index	19.5	2.2	0.9	-14.0	-11.4	-13.2	5.9	-13.4	0.9	0.2	7.5	Dec-02
\$4,357,584	8.7	Harris Associates International Value L.P.	24.4	4.3	5.8	-10.5	-1.3	-5.3	22.8	-7.7	4.8	NA	11.9	Feb-03
		MSCI EAFE Value Index	22.1	0.3	-0.2	-15.5	-15.5	-15.7	3.2	-15.1	0.0	1.8	8.7	Feb-03
\$3,807,195	7.6	Artisan International Inv Fund	19.5	2.2	0.9	-14.0	-11.4	-13.2	5.9	-13.4	0.9	0.2	8.2	Feb-03
		MSCI EAFE Net Index	21.6	3.7	-2.5	-12.4	-11.4	-14.6	7.7	-11.8	2.5	NA	7.2	Dec-02
		MSCI EAFE Growth Index	16.8	4.2	2.0	-12.4	-7.0	-10.7	8.6	-11.7	1.7	-1.6	6.8	Dec-02
		MSCI EAFE Net Index	19.5	2.2	0.9	-14.0	-11.4	-13.2	5.9	-13.4	0.9	0.2	7.5	Dec-02

Prime

Executive Summary

Town of Palm Beach

Firefighters Retirement System

Executive Summary as of June 30, 2010

Assets Market Value	% of Portfolio		{-----Quarter Ending-----}				{-----Period Ending Jun-2010-----}					{-----Inception-----}	
			Sep-09	Dec-09	Mar-10	Jun-10	Fiscal YTD	Calendar YTD	1 YR	3 YRS	5 YRS	10 YRS	Return Since
\$242,263	0.5	Private Equity											
\$112,613	0.2	Landmark Equity Partners, XIV L.P. (\$1.25 MM Cmt'd)											
\$129,650	0.3	Private Equity Investment Fund, V L.P. (\$1.25 MM Cmt'd)											
\$14,863,485	29.7	Total Flexible Capital	5.9	3.1	3.1	-2.8	3.4	0.3	9.5	0.8	5.3	NA	6.3 Feb-03
		HFRI Fund-of-Funds Index	4.4	1.5	1.4	-2.8	0.1	-1.4	4.5	-4.1	2.3	3.4	4.0 Feb-03
		HFRI Fund-of-Funds Diversified Index	4.4	1.6	1.6	-2.6	0.5	-1.1	4.9	-3.9	2.4	3.3	4.1 Feb-03
\$9,087,850	18.2	Absolute Return	6.6	3.5	4.1	-1.3	6.3	2.7	13.3	2.7	6.5	NA	6.9 Feb-03
\$9,087,850	18.2	Archstone Market Neutral Strategies Fund, Ltd.	6.6	3.5	4.1	-1.3	6.3	2.7	13.3	NA	NA	NA	0.4 Jun-08
		HFRI Fund-of-Funds Conservative Index	3.7	1.1	1.7	-1.4	1.3	0.2	5.1	-3.8	1.6	3.1	-5.6 Jun-08
\$5,775,635 ¹	11.6	Forester Offshore B, Ltd.	4.3	2.7	1.7	-5.0	-0.7	-3.4	3.5	1.4	NA	NA	1.4 Jun-07
		HFRI Fund-of-Funds Strategic Index	5.1	1.7	1.3	-2.9	0.0	-1.7	5.1	-4.8	2.6	3.1	-4.8 Jun-07
\$13,886,461	27.8	Total Fixed Income	4.9	2.6	1.0	0.8	4.5	1.8	9.5	3.1	3.6	5.3	6.3 Mar-91
		Fixed Income Composite Index	6.6	2.8	1.3	-1.1	3.0	0.2	9.8	4.6	5.0	3.6	8.0 Mar-91
\$5,748,374 ²	11.5	Income Research Convertibles	7.7	3.3	1.8	-3.2	1.8	-1.5	9.6	1.8	4.0	NA	4.0 Oct-04
		BOA Conv. Bond US Inv. Gr. Index	10.7	3.4	1.7	-4.3	0.6	-2.7	11.3	2.8	5.2	2.7	4.4 Oct-04
		BC U.S. Credit Index	7.5	1.0	2.3	3.3	6.7	5.6	14.7	7.4	5.3	6.9	5.1 Oct-04
\$8,138,087 ²	16.3	Income Research TIPS	3.2	1.6	0.7	3.8	6.2	4.5	9.6	NA	NA	NA	4.2 Jun-08
		BC TIPS 1-10 Year Index	3.0	2.2	0.9	2.3	5.4	3.2	8.5	6.7	4.9	6.7	3.1 Jun-08
\$3,307,786	6.6	Total Inflation Hedging	5.5	1.9	1.8	-5.6	-2.1	-3.9	3.3	-17.8	NA	NA	-10.5 May-06
		Inflation Hedging Actual Index	10.7	3.2	2.4	-2.7	2.8	-0.3	13.8	-5.6	-0.6	-0.3	-1.1 May-06
\$2,224,527 ¹	4.5	Guggenheim Real Estate PLUS Trust	-0.2	-0.9	1.9	0.0	1.0	1.9	0.7	-19.6	NA	NA	-11.4 Jun-06
		70% NCREIF Index/ 30% NAREIT Index	7.7	1.3	3.5	1.1	6.1	4.7	14.2	-4.4	3.9	8.7	0.4 Jun-06
		NCREIF Property Index	-3.3	-2.1	0.8	3.3	1.9	4.1	-1.5	-4.7	3.8	7.1	0.4 Jun-06
\$1,083,259	2.2	T. Rowe Price New Era Fund	18.3	7.2	1.5	-15.3	-7.8	-14.0	9.1	NA	NA	NA	-25.1 Jun-08
		S&P/GS Natural Resources Index	17.3	6.6	0.5	-9.8	-3.3	-9.3	13.4	-5.3	6.8	8.2	-23.7 Jun-08

Prime

Executive Summary

Town of Palm Beach

Firefighters Retirement System

Executive Summary as of June 30, 2010

Assets Market Value	% of Portfolio	{-----Quarter Ending-----}					{-----Period Ending Jun-2010-----}					{---Inception---	
		Sep-09	Dec-09	Mar-10	Jun-10	Fiscal YTD	Calendar YTD	1 YR	3 YRS	5 YRS	10 YRS	Return	Since
\$462,600 ³	0.9	0.0	0.0	0.0	0.0	0.1	0.0	0.1	1.4	2.6	2.6	3.6	Mar-91
		0.0	0.0	0.0	0.0	0.1	0.0	0.1	1.4	2.6	NA	2.2	Dec-01
		0.0	0.0	0.0	0.0	0.1	0.0	0.1	1.4	2.6	2.6	2.2	Dec-01

Please Note: -Periods Greater Than One Year Are Annualized

-Prior to 10/31/1999: Performance representative of Town of Palm Beach Total Fund.

-Prior to 12/31/2001: Performance provided by Callan & Associates.

-Prior to 12/31/2004: Portfolios were combined

-Actual Index represents actual allocations with index returns.

-Target Index (effective 10/1/2009): 17.5% Russell 3000 Index/ 17.5% MSCI EAFE Net Index/ 30% HFRI FOF Index/ 15% Inflation Hedging Actual Index/ 20% Fixed Income Composite Index

-Target Index (effective 1/1/2009): 30% Russell 3000 Index/ 5% MSCI EAFE Net Index/ 30% HFRI FOF Index/ 15% Inflation Hedging Actual Index/ 20% Fixed Income Composite Index

-Fixed Income Composite Index (effective 10/1/2009): 50% BOA Conv. Bond US Inv. Gr. Index / 50% BC TIPS 1-10 Year Index

-Inflation Hedging Actual Index represents actual allocations with index returns

-From 12/31/2000 to 03/31/2003: Target Index: 60% S&P 500 Index/ 40% BC Aggregate Index

¹ Market value estimated with manager reported preliminary performance

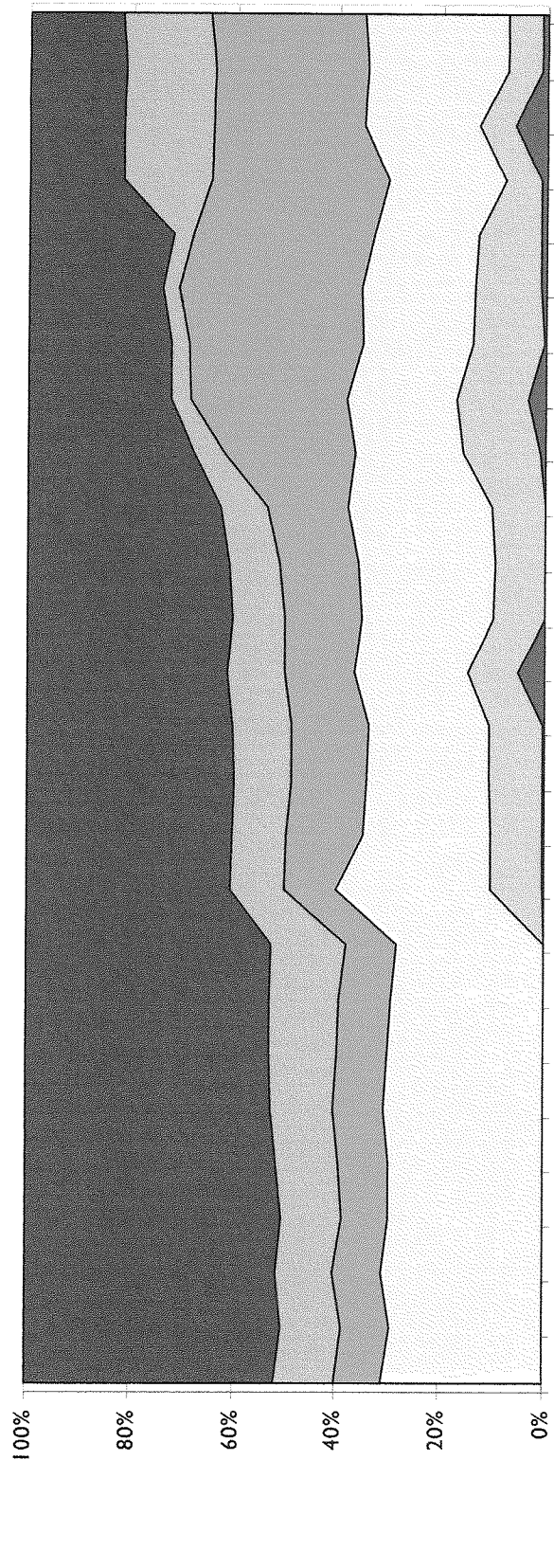
² Represent manager reported market value

³ Valued quarterly; market value as of 3/31/2010

⁴ Client specific cash performance not available. Citigroup Treasury Bill 3 Month Index is being reported

Prime

Asset Allocation – Historical



	Mar-04	Jun-04	Sep-04	Dec-04	Mar-05	Jun-05	Sep-05	Dec-05	Mar-06	Jun-06	Sep-06	Dec-06	Mar-07	Jun-07	Sep-07	Dec-07	Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10	Jun-10
Domestic Equity	48	49	48	49	48	47	47	47	48	40	40	40	40	39	40	39	37	32	28	28	26	28	28	18	18	18
Intl Equity	12	12	11	12	12	12	13	14	14	10	11	11	11	11	10	10	9	6	4	3	3	4	4	17	18	17
Flexible Capital	9	9	10	9	10	10	10	10	10	10	15	15	15	13	15	15	16	25	30	34	35	35	34	29	29	30
Fixed Income	31	30	31	30	30	31	30	30	28	30	25	24	23	22	25	26	28	21	21	21	22	20	23	22	27	28
Inflation Hedging	0	0	0	0	0	0	0	0	0	10	10	10	11	10	10	10	10	15	14	14	13	12	7	7	7	7
Cash	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	1	3	0	1	1	1	6	1	1

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Board/Commission Annual Report

Agenda Title

Police Officers' Retirement Board of Trustees. [Raymond Snow, Chair and William Hanes, Pension Administrator]

Presenter

Wilbur Ross, Chair, and William Hanes, Pension Administrator

Supporting Documents

- Memorandum dated September 2, 2010, from William Hanes, Plan Administrator for the Police Board of Trustees
- Memorandum dated September 2, 2010, from Raymond W. Snow, Chair of the Police Board of Trustees
- Derivation of Funding Value of Retirement System Assets from the Annual Actuarial Valuation Report for year Ending September 30, 2009
- Unfunded Actuarial Accrued Liability from the Annual Actuarial Valuation Report for Year Ending September 30, 2009
- Investment Manager Returns for the Periods Ended June 30, 2010, provided by Prime Buchholz (Investment Consultant)
- Asset Allocation, provided by Prime Buchholz

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: William Hanes, Plan Administrator for the Police Officer Board of Trustees

Re: Annual Report of the Police Officer Board of Trustees

Date: September 2, 2010

GENERAL INFORMATION

The attached memorandum and status reports are being provided to the Mayor and Town Council from Mr. Raymond Snow, as chairman of the Firefighter Board of Trustees. The information relates to the pension fund's unfunded liabilities and investment performance.

Attachments:

- Letter from Mr. Raymond Snow, Chair
- Derivation of Funding Value of Retirement System Assets from the Annual Actuarial Valuation Report for year Ending September 30, 2009
- Unfunded Actuarial Accrued Liability from the Annual Actuarial Valuation Report for Year Ending September 30, 2009
- Investment Manager Returns for the Periods Ended June 30, 2010, provided by Prime Buchholz (Investment Consultant)
- Asset Allocation, provided by Prime Buchholz

**TOWN OF PALM BEACH RETIREMENT SYSTEM
POLICE OFFICER BOARD OF TRUSTEES**

*Raymond W. Snow, Chairman
Detective Michael Lynch, Chairman Pro Tem
Sergeant Chris Proscia, Secretary*

*James McC. Wearn
Gerald Goldsmith*

September 2, 2010

Mayor and Members of Town Council
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: Police Officer Board of Trustees
Town of Palm Beach Retirement System

Dear Mayor and Council Members:

The Police Officer Board of Trustees have authorized me to present to you the important matters facing the fund and its members, and I look forward to the opportunity to do so. The Trustees understand that matters of the board's business are extremely important to the Town, and I hope that the written material and my presentation will be of value to you.

The respective retirement boards have agreed to present material in a similar format that we hope will help you to make comparisons where appropriate. I look forward to discussing the matters of the board at the September 14, 2010 Town Council meeting.

Actuarial Report

- Mr. Brad Armstrong, GRS, reported at the May 13, 2010 meeting that eight percent (8%) continues to be an appropriate long term return assumption for the plan. Sean Higman, Prime Buchholz, stated at the same meeting his agreement with Mr. Armstrong.
- The plan's actuarial funding level has been reduced from 90.0% to 84.8% from September 30, 2008 to September 30, 2009.
- The plan carries unrecognized losses of \$10.5 million from past market losses. (see Derivation of Funding chart)
- The Board reviewed matters of the non-investment cash flow experiences of the plan with the actuary and investment consultant at the May 13, 2010 quarterly board meeting.

- The Board reviewed matters of GASB preliminary views with the actuary at the most recent August 24, 2010 quarterly meeting of the board.

Investment Report

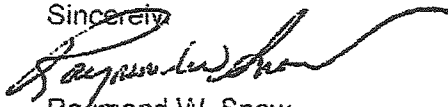
- The fund's allocation to International Equities was increased in response to a change in state statute, allowing for total investment in foreign securities totaling 25% (from 10%). Current allocation is 12.6%.
- The Board adopted a change to the Investment Policy to include the requirements under state law to effect divestiture of securities of companies doing business with certain state identified terrorist countries (Sudan/Iran).
- The plan achieved a total fund annual return of 9.6% as of June 30, 2010. The annual return for July 31, 2010 was 9.1%.
- The board reviews with the Investment Consultant matters of the plan's investment allocation at each quarterly board meeting. The Board recently hired Vanguard Inflation-Protection Securities to invest plan assets with a TIPS portfolio.

Other Matters

- The Board reviewed matters of the consultant's report at meetings with the consulting firm of Cavanaugh, McDonald.
- The Board approved a recommendation to Town Council that trustees serve two year staggering terms of office.
- The Chapter 185 report has been approved by the State Department of Retirement, and the Police Officer plan has received a check for \$211,524.38.

I look forward to presenting these and other matters to you at the Town Council meeting on Tuesday, September 14, 2010. I also will be more than happy to answer questions you may have regarding the plan at the meeting.

Sincerely,



Raymond W. Snow
Chairman

Derivation of Funding Value of Retirement System Assets

Year Ended September 30:	2008	2009	2010	2011	2012	2013
A. Funding Value Beginning of Year	\$ 58,485,942	\$ 61,667,825				
B. Market Value End of Year	54,715,567	52,565,185				
C. Market Value Beginning of Year	62,462,218	54,715,567				
D. Non-Investment Net Cash Flow	(323,893)	(1,063,232)				
E. Investment Income						
E1. Market Total: B - C - D	(7,422,758)	(1,087,150)				
E2. Amount for Immediate Recognition at 8.0%	4,665,920	4,890,897				
E3. Amount for Phased-In Recognition: E1 - E2	(12,088,678)	(5,978,047)				
F. Phased-In Recognition of Investment Income						
F1. Current Year: 0.20 x E3	(2,417,736)	(1,195,609)				
F2. First Prior Year	749,980	(2,417,736)	\$ (1,195,609)			
F3. Second Prior Year	100,856	749,980	(2,417,736)	\$ (1,195,609)		
F4. Third Prior Year	267,031	100,856	749,980	(2,417,736)	\$ (1,195,609)	
F5. Fourth Prior Year	139,725	267,031	100,858	749,979	(2,417,734)	\$ (1,195,611)
F6. Adjustment to Recognize 20% Corridor	0	0				
F7. Total Recognized Investment Gain/(Loss)	(1,160,144)	(2,495,478)	(2,762,507)	(2,863,366)	(3,613,343)	(1,195,611)
G. Accelerated Recognition of Investment Income						
H. Funding Value End of Year: A + D + E2 + F7						
Not to Exceed 120% of Market Value	61,667,825	63,000,012				
I. Difference between Market & Funding Value	(6,952,258)	(10,434,827)				
J. Recognized Rate of Return	6.01%	3.92%				
K. Recognized Rate of Investment Expenses	0.49%	0.33%				

The Funding Value of Assets recognizes assumed investment income (line E2) fully each year. Differences between actual and assumed investment income (line E3) are phased in over a closed 5 year period. During periods when investment performance exceeds the assumed rate, the Funding Value of Assets will tend to be less than Market Value. During periods when investment performance is less than the assumed rate, the Funding Value of Assets will tend to be greater than Market Value. If assumed rates are exactly realized for 4 consecutive years, it will become equal to Market Value.

**Unfunded Actuarial Accrued Liability
as of September 30**

	<u>2009</u>	<u>2008</u>
A. Actuarial present value of future benefits	\$89,431,975	\$81,769,265
B. Actuarial present value of future normal costs	15,175,035	13,244,497
C. Actuarial accrued liability	74,256,940	68,524,768
D. Actuarial value of assets	63,000,012	61,667,825
E. Unfunded actuarial accrued liability	11,256,928	6,856,943
F. Funded ratio	84.8%	90.0%

Executive Summary

Town of Palm Beach

Police Retirement System

Executive Summary as of June 30, 2010

Assets Market Value	% of Portfolio	{-----Quarter Ending-----}				{-----Period Ending Jun-2010-----}					{-----Inception-----}	
		Sep-09	Dec-09	Mar-10	Jun-10	Calendar YTD	1 YR	3 YRS	5 YRS	10 YRS	Return	Since
\$51,391,136	100.0	Total Fund	8.7	3.6	2.4	-5.0	-2.6	9.6	-4.1	2.4	3.2	7.4
		Target Index	9.1	2.6	2.2	-5.0	-2.9	8.8	-4.4	1.9	2.5	7.4
		Actual Index	8.7	2.6	2.3	-4.9	-2.7	8.4	-4.4	2.2	3.0	8.9
		60% S&P 500 Index/40% BC Aggregate Index	10.8	3.7	4.0	-5.6	-1.8	12.8	-2.7	2.0	1.9	7.6
		Consumer Price Index	0.1	0.0	0.8	0.4	1.2	1.3	1.6	2.4	2.4	2.5
												Mar-91
\$17,257,049	33.6	Global Equity	16.8	5.3	4.0	-10.3	-6.7	14.7	-7.9	1.5	0.9	9.8
		Domestic Equity	15.6	6.2	5.5	-9.6	-4.6	17.0	-7.2	1.0	0.4	9.5
		Russell 3000 Index	16.3	5.9	6.0	-11.3	-6.0	15.7	-9.5	-0.5	-0.9	7.8
												Mar-91
\$2,438,663	4.7	SSGA S&P 500 Flagship Index Fund	15.6	6.0	5.4	-11.4	-6.7	14.4	-9.8	-0.8	-1.6	7.3
		S&P 500 Index	15.6	6.0	5.4	-11.4	-6.7	14.4	-9.8	-0.8	-1.6	7.3
		Stratlem & Company Large Cap Core Account	14.0	6.7	3.7	-9.1	-5.7	14.8	-5.7	NA	NA	-0.4
		S&P 500 Index	15.6	6.0	5.4	-11.4	-6.7	14.4	-9.8	-0.8	-1.6	-3.3
		SSGA S&P Midcap Index NL Fund	20.0	5.5	9.0	-9.6	-1.5	24.7	NA	NA	NA	-1.6
		S&P Midcap Index	20.0	5.6	9.1	-9.6	-1.4	24.9	-5.9	2.2	5.3	-1.4
		CRM Midcap Value Inst Fund	13.0	5.2	5.1	-11.7	-7.1	10.4	NA	NA	NA	-5.2
		Russell Midcap Value Index	23.6	5.2	9.6	-9.6	-0.9	28.9	-9.4	0.7	7.6	-2.2
		Genera Mid Cap Equity Account	13.5	7.1	5.4	-5.9	-0.8	20.7	-2.8	NA	NA	2.9
		Russell Midcap Growth Index	17.6	6.7	7.7	-10.2	-3.3	21.3	-7.5	1.4	-2.0	0.4
												Aug-05
\$6,494,965	12.6	International Equity	23.1	4.0	1.6	-11.4	-10.0	15.2	-9.4	3.9	NA	9.1
		MSCI EAFE Net Index	19.5	2.2	0.9	-14.0	-13.2	5.9	-13.4	0.9	0.2	7.5
												Dec-02
\$3,369,201	6.6	Harris Associates International Value L.P.	24.4	4.3	5.8	-10.5	-5.3	22.8	-7.7	4.8	NA	11.9
		MSCI EAFE Value Index	22.1	0.3	-0.2	-15.5	-15.7	3.2	-15.1	0.0	1.8	8.7
		MSCI EAFE Net Index	19.5	2.2	0.9	-14.0	-13.2	5.9	-13.4	0.9	0.2	8.2
		Artisan International Inv Fund	21.6	3.7	-2.5	-12.4	-14.6	7.7	-11.8	2.5	NA	7.2
		MSCI EAFE Growth Index	16.8	4.2	2.0	-12.4	-10.7	8.6	-11.7	1.7	-1.6	6.8
		MSCI EAFE Net Index	19.5	2.2	0.9	-14.0	-13.2	5.9	-13.4	0.9	0.2	7.5
												Dec-02

Prime

Source: Morningstar, as of 6/30/2010

Executive Summary

Town of Palm Beach

Police Retirement System

Executive Summary as of June 30, 2010

Assets Market Value	% of Portfolio	Quarter Ending				Period Ending Jun-2010					Inception	
		Sep-09	Dec-09	Mar-10	Jun-10	Calendar YTD	1 YR	3 YRS	5 YRS	10 YRS	Return	Since
\$13,986,342	27.2	Total Flexible Capital										
		HFRI Fund-of-Funds Index										
		4.6	2.6	2.2	-2.9	-0.8	6.5	-2.0	3.5	NA	5.0	Feb-03
		4.4	1.5	1.4	-2.8	-1.4	4.5	-4.1	2.3	3.4	4.0	Feb-03
\$2,765,904	5.4	Archstone Offshore Fund, Ltd.										
		7.3	3.5	2.8	-3.7	-1.0	9.8	-2.4	NA	NA	2.6	Jun-06
		4.4	1.6	1.6	-2.6	-1.1	4.9	-3.9	2.4	3.3	0.4	Jun-06
		HFRI Fund-of-Funds Diversified Index										
\$5,531,032 ¹	10.8	4.0	2.3	2.4	-0.3	2.1	8.6	NA	NA	NA	2.5	Sep-08
		Private Advisors Stable Value ERISA Fund, Ltd.										
		3.7	1.1	1.7	-1.4	0.2	5.1	-3.8	1.6	3.1	-1.5	Sep-08
		HFRI Fund-of-Funds Conservative Index										
\$5,689,406 ¹	11.1	4.3	2.7	1.7	-5.0	-3.4	3.5	NA	NA	NA	2.7	Sep-08
		Forester Offshore B Fund, Ltd.										
		5.1	1.7	1.3	-2.9	-1.7	5.1	-4.8	2.6	3.1	-0.3	Sep-08
		HFRI Fund-of-Funds Strategic Index										
\$11,177,029	21.7	Total Fixed Income										
		6.3	1.8	2.0	0.0	1.9	10.3	5.0	4.7	5.9	6.6	Mar-91
		7.2	1.8	1.8	-0.5	1.3	10.5	5.3	5.5	3.8	8.1	Mar-91
		Fixed Income Composite Index										
\$1,415,563	2.8	SSgA Passive Bond Market NL Fund										
		3.7	0.2	1.7	3.5	5.3	9.4	7.5	5.4	NA	5.7	Dec-01
		3.7	0.2	1.8	3.5	5.3	9.5	7.6	5.5	6.5	5.7	Dec-01
		BC Aggregate Index										
\$4,229,260	8.2	5.2	0.2	2.4	3.4	5.9	11.6	8.0	5.8	NA	5.2	Dec-02
		Richmond Capital Fixed Income Account										
		3.7	0.2	1.8	3.5	5.3	9.5	7.6	5.5	6.5	5.2	Dec-02
		BC Aggregate Index										
\$5,532,206 ²	10.8	7.6	3.4	1.7	-3.3	-1.6	9.5	1.5	3.8	NA	3.9	Oct-04
		Income Research Convertibles										
		10.7	3.4	1.7	-4.3	-2.7	11.3	2.8	5.2	2.7	4.4	Oct-04
		BOA Conv. Bond US Inv. Gr. Index										
\$7,702,606	15.0	Total Inflation Hedging										
		6.6	4.4	0.1	-3.5	-3.4	7.5	-12.0	NA	NA	-5.9	Jun-06
		8.9	4.4	0.5	-2.8	-2.3	11.0	-1.1	1.9	0.9	2.4	Jun-06
		Inflation Hedging Composite Index										
\$2,464,651 ¹	4.8	Guggenheim Real Estate PLUS Trust										
		-0.2	-0.9	1.9	0.0	1.9	0.7	-19.6	NA	NA	-11.4	Jun-06
		7.7	1.3	3.5	1.1	4.7	14.2	-4.4	3.9	8.7	0.4	Jun-06
		70% NCREIF Index/ 30% NAREIT Index										
		-3.3	-2.1	0.8	3.3	4.1	-1.5	-4.7	3.8	7.1	0.4	Jun-06
\$3,405,596	6.6	12.1	8.1	-0.2	-9.2	-9.4	9.8	NA	NA	NA	-7.2	Sep-08
		NCREIF Property Index										
		Wellington Diversified Inflation Hedges CTF										
		9.9	7.4	0.1	-8.9	-8.8	7.6	-2.9	6.4	NA	-4.0	Sep-08
		DIH Composite Index										
\$1,832,359	3.6	NA	NA	NA	3.9	NA	NA	NA	NA	NA	3.2	Jan-10
		Vanguard Inflation-Protected Securities Adm Fund										
		3.1	1.8	0.6	3.8	4.4	9.5	7.6	5.0	7.5	3.2	Jan-10
		BC US Treasury Inflation Notes Index										

Prime

Executive Summary

Town of Palm Beach

Police Retirement System

Executive Summary as of June 30, 2010

Assets Market Value	% of Portfolio	{-----Quarter Ending-----}				{-----Period Ending Jun-2010-----}					{-----Inception-----}	
		Sep-09	Dec-09	Mar-10	Jun-10	Calendar YTD	1 YR	3 YRS	5 YRS	10 YRS	Return	Since
\$1,074,708 ¹	2.1	0.0	0.0	0.0	0.0	0.0	0.1	1.4	NA	NA	2.5	Mar-06
\$1,074,708 ²	2.1	0.0	0.0	0.0	0.0	0.0	0.1	1.4	NA	NA	2.5	Mar-06
\$193,403 ⁴	0.4	0.0	0.0	0.0	0.0	0.0	0.1	1.4	2.6	2.6	2.4	Mar-06

Total Liquid Capital

Government Stif 15

Citigroup Treasury Bill 3 Months Index

Meridian Holdback

Please Note: -Periods Greater Than One Year Are Annualized

-Prior to 10/31/1999: Performance representative of Town of Palm Beach Total Fund.

-Prior to 12/31/2001: Performance provided by Callan & Associates.

-Prior to 12/31/2004: Portfolios were combined

-Actual Index represents actual allocations with index returns

-Target Index (effective 9/1/2009): 20% Russell 3000 Index/ 15% MSCI EAFE Net Index/ 30% HFRI FOF Index/ 15% Inflation Hedging Composite Index/ 20% BC Aggregate Index

-Target Index (effective 1/1/2009): 30% Russell 3000 Index/ 5% MSCI EAFE Net Index/ 30% HFRI FOF Index/ 15% Inflation Hedging Composite Index/ 20% BC Aggregate Index

-Fixed Income Composite Index: 50% BOA Conv. Bond US Inv. Gr. Index / 50% BC Aggregate Index

-Inflation Hedging Composite Index (effective 2/1/2010): 30% 70% NCREIF Index/30% NAREIT Index/ 45% DIH Composite Index / 25% BC US Treasury Inflation Notes Index

¹ Market value estimated using preliminary manager performance or NAV

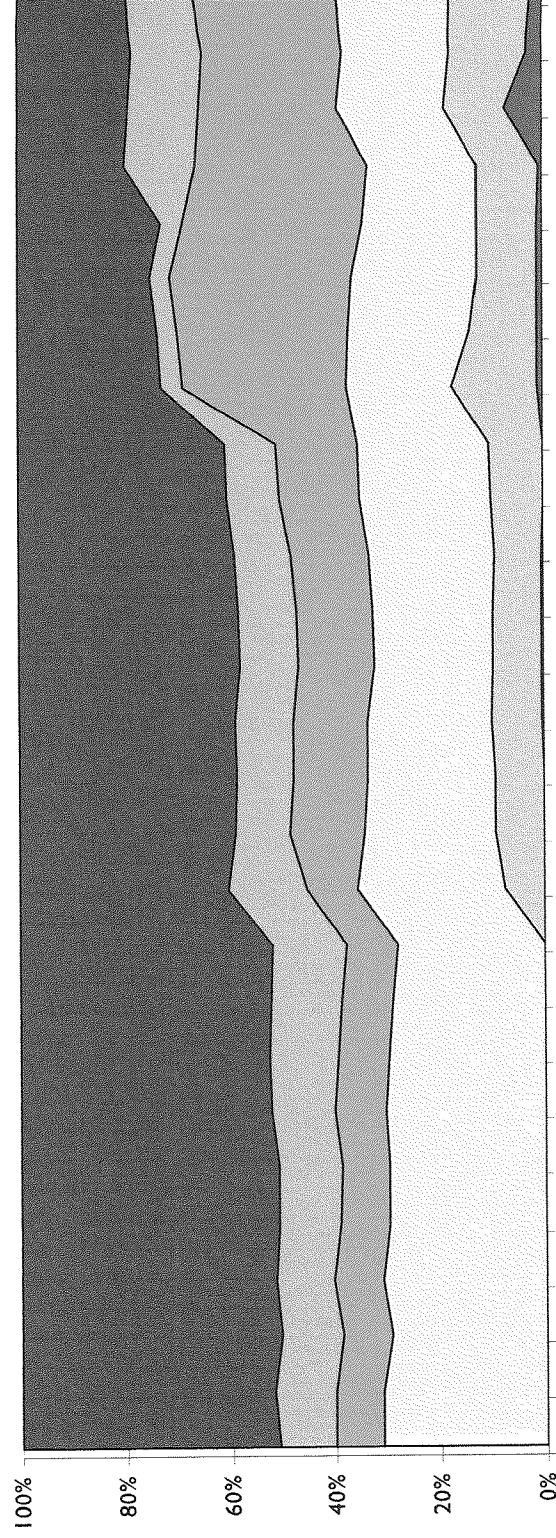
² Market value provided by manager due to valuation and accrual discrepancies

³ Client specific cash performance not available. Citigroup Treasury Bill 3 Month Index is being reported

⁴ Included in total market value, excluded from performance

Prime

Asset Allocation – Historical



	Dec-03	Mar-04	Jun-04	Sep-04	Dec-04	Mar-05	Jun-05	Sep-05	Dec-05	Mar-06	Jun-06	Sep-06	Dec-06	Mar-07	Jun-07	Sep-07	Dec-07	Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10	Jun-10
Domestic Equity	49	48	49	48	49	49	48	47	48	48	40	41	42	41	42	42	41	40	40	40	27	27	27	21	21	22	21
Intl Equity	11	12	12	11	12	14	15	13	13	14	15	10	11	11	11	11	11	10	10	4	4	4	4	13	14	14	13
Flexible Capital	9	9	9	10	9	10	10	10	10	10	10	14	14	14	15	15	15	15	16	16	31	33	35	33	26	27	27
Fixed Income	31	31	30	31	30	30	30	30	29	28	28	25	24	24	23	23	24	25	25	20	23	24	22	21	21	21	22
Inflation Hedging	0	0	0	0	0	0	0	0	0	0	8	9	10	10	9	10	9	10	10	16	13	12	12	12	15	15	15
Cash	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	7	3	3

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Committee Reports

Agenda Title

Ordinances, Rules and Standards Committee Meeting of August 26, 2010.

Presenter

William Diamond, Town Council Member

Supporting Documents

- Report of the Ordinances, Rules and Standards Committee Meeting held on August 26, 2010

**MINUTES OF THE ORDINANCES RULES AND STANDARDS COMMITTEE
MEETING HELD ON THURSDAY, AUGUST 26, 2010**

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards Committee meeting was called to order on Thursday, August 26, 2010 at 10:00 a.m. in the Town Council Chambers, Palm Beach. On roll call, Chair Diamond and Committee Member Coniglio were present.

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

III. PUBLIC COMMENT

There were none.

IV. REGULAR AGENDA

A. Old Business

1. Ordinance Amending Chapter 18, Buildings and Building Regulations

Town Attorney Randolph presented Chapter 18 which had previously had been reviewed. There was discussion about a new State Law HB 663.

Committee Member Coniglio asked if this had any effect on the Town Budget or homeowners. Deputy Town Manager Bradford stated that the town received additional monies for training of building officials and this was an additional cost to residents. Committee Member Coniglio said this created additional work for staff. The Town will keep 10% of the 3% surcharge. Committee Member Coniglio was opposed to this since it creates more work for staff and the State gets more money, like an unfunded mandate. She viewed it as a tax. Chair Diamond did not disagree, but felt it was more of a user tax.

Chapter 94 sales

Chair Diamond asked if garage sales are considered auctions. Deputy Town Manager Bradford said garage sales were addressed separately in the code. Garage sales are required to have a permit and the Code currently regulates public auctions, but is in need of updated language.

The Committee reviewed the draft Ordinance pertaining to absences on Boards and Commissions. Town Attorney will redraft the Ordinance with the change in language to clarify the Town Council's "previous 3 strike rule" whereby a board member's third absence would result in automatic revocation of membership on the Board.

Veronica Close Assistant Planning Zoning and Building Director, noted that if no notice was given for an absence, staff would contact the Board or Commission member to see if it was excused, but most times, people were informing someone on staff of an absence.

2. Ordinance Amending Chapter 78, Peddlers and Solicitors

Deputy Town Manager Bradford announced there would be a master fee resolution that will include a master list of all fees. The document will be changed, as needed, by Resolution. Committee Member Coniglio was opposed to the \$25 fee for peddlers since she felt it would encourage peddlers in Town.

Attorney Randolph indicated that you could not prohibit it as Chair Diamond suggested. Deputy Town Manager Bradford added that you cannot charge more than the actual costs of administering the program.

Raychel Houston, Code Enforcement Manager, announced that she maintains a no-solicitation list that is provided to anyone that requests a peddler's permit. It lists the residents who do not wish to be contacted. There are currently 200-300 persons on it.

The Committee agreed to the proposed changes.

3. Ordinance Amending Chapter 86, Planning

Deputy Town Manager Bradford said this Ordinance was requested by Public Works. This clarifies the source of water are not to be directed into the sanitary sewer system.

The committee agreed to the changes.

4. Ordinance Amending Chapter 98, Secondhand Goods

Town Attorney Randolph stated that this Ordinance would be redrafted to show 98-31 "prohibiting pawn brokers" but would delete the sections shown with strikethroughs as they are already covered by State Statutes.

The committee agreed to the changes.

5. Ordinance Amending Chapter 106, Streets, Sidewalks, and Other Public Places

Deputy Town Manager Bradford stated that Section 106-158 included additional language to include bicycles and Segways for use by the Police Department only and that subsection (a) should be amended to read that “members of the police department are exempt from this section in regard to the performance of their official duties.”

Chair Diamond changed the subject and asked if you are required to carry a bag to clean up dog feces and are supposed to produce on demand. Code Enforcement Officials declared that he was correct.

Mr. Bradford pointed out additional changes proposed to Sec. 106.291 (1) and (2) to strike language referring to the “chief code compliance officer or his/her designee” and replacing it with “chief of police or his/her designee.”

The Committee accepted the proposed Chapter 106 changes.

6. Ordinance Amending Chapter 110, Subdivisions

The Committee reviewed the draft ordinance and discussed the proposed changes.

The Committee accepted the proposed language.

B. New Business

1. Draft Ordinance Implementing Building Permit Fee Surcharges Required by Florida Statutes.

2. Ordinance Amending Chapter 94, Sales

Chair Diamond asked how garage sales were conducted. Lead Code Enforcement Officer Rob Walton said they are permitted during daylight hours and are limited to one sign. The permit is issued by the Finance Department.

Committee Member Conglio asked about the prohibition of auctions on certain streets. Deputy Town Manager Bradford clarified that the language she was referring to had been in the Code for some time.

Lead Code Enforcement Officer Walton and Paul Castro, Zoning Administrator, clarified that the auction areas were restricted during season and that was the reason certain streets were prohibited.

There was discussion about having the same auctioneer do an auction more than twice per year. Staff felt that it best to limit the number of auctions conducted at any given location, but not the

1 person conducting the auction. The proposed ordinance language also requires that auctions only
2 pertain to the goods and services similar to that provided in the course of business within the
3 business operating at the property in question. Committee Member Coniglio recommended
4 removing the prohibited streets. Deputy Town manager Bradford indicated since this proposed
5 degree of regulation was similar to the regulation standards in the special events permit
6 requirements, there may no longer be a need to impose specific auction prohibitions on certain
7 streets.

8
9 **The Committee decided to leave Section 94-32 as is.**

10
11 Section 2 page 3 Section 94-105 was recommended to be deleted.

12
13 **The Committee agreed.**

14
15 In response to a question from Chair Diamond, Lead Code Enforcement Officer Walton
16 addressed the end of season sales are not required to obtain a permit.

17
18 6. Ordinance Amending Chapter 110, Subdivisions

19 Committee Member Coniglio returned to the review of procedures and asked if it had previously
20 been done by the Director of Planning Zoning, and Building. Deputy Town Manager Bradford
21 responded that in years past the director was also the building official but now they are two
22 different positions as each position has very different education requirements.

23
24 **The Committee agreed to the changes.**

25
26 6. Ordinance Amending Chapter 110, Subdivisions

27 Committee Member Coniglio asked why twenty copies are required for plan submittal. Assistant
28 Director Close responded that the development review committees are involved and that covers
29 the committee members and staff. In the future, there will be digital submission. There was
30 discussion of changing the language to incorporate the inclusion of electronic documents.

31
32 **The Committee agreed to the changes.**

33
34 1. Draft Ordinance Implementing Building Permit Fee Surcharges Required by Florida
Statutes.

35 On page 31 was the surcharge discussed earlier by Deputy Town Manager Bradford. Item 1 was
36 changed to include the new surcharge requirement language. Committee Member Coniglio asked
37 about subsection (m) regarding the sewer capital connection if this was pass through or Town
38 dollars. Deputy Town Manager Bradford explained the capital connection charge theory and
39 that the charge in this instance was a pass through to the person seeking to hook up to the system.

1 Since this was in essence an impact fee, the increased demand placed on the sanitary sewer
2 system was borne by the applicant and not the existing users of the facilities.

3
4 **The Committee agreed to the changes.**

5
6 V. ANY OTHER MATTERS

7 Deputy Town Manager Bradford announced that next month was the review of Chapter 66 but
8 that would be the only item on the agenda since there will be lengthy discussion pertaining to
9 vegetation, coastal and dune protection, hedges, and invasive vs. non-invasive species. Paul
10 Brazil, Director of Public works stated that most of the items are defined by DEP. After next
11 month's meeting there may be a need to hold two more meetings to complete the review of the
12 proposed ordinances generated by the ORS review of the Town Code.

13
14 VI. ADJOURNMENT

15 There being no further business, the Ordinance, Rules and Standards Committee Meeting of
16 Thursday, August 26, 2010, was adjourned at 10:50 a.m.

17
18
19 APPROVED:

20
21
22
23 _____
24 William J. Diamond
25 Chairman
26

27 8-26-10 ORS Backup

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - Old Business

Agenda Title

Accelerated Capital Improvement Program.-Overview of Current Status and Plans for the Future.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works.
- ACIP Spreadsheet

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Accelerated Capital Improvement Program - Update

Date: September 2, 2010

STAFF RECOMMENDATION

Staff requests that Town Council accept the following update on the Accelerated Capital Improvement Program and provide any other direction deemed appropriate. Also, staff recommends that Town Council approve Resolutions No. 100-10, 101-10, 103-10, and 105-10 authorizing the various contract awards and establishing design phase budgets. Staff is prepared to discuss any of these items in detail or Council may choose to approve all of these resolutions in a single motion.

GENERAL INFORMATION

The majority of the elements of the Accelerated Capital Improvement Program were put on hold during the early part of this summer. It is now time to move forward with this program as well as other necessary Capital projects. We currently have 42 projects that either are in the planning stages or have been initiated (not including Coastal). We have attached a summary of projects for your reference. Some of our existing projects include:

- Design and permitting of the new subaqueous sanitary sewer force main (Bradley Park)
- Alternative analysis for the D-15 (D-6, D-7) storm water pump station
- Renovation and improvements to the existing D-9 storm water pump station (Mediterranean Avenue)
- Design of sanitary sewer force main replacement from Phipps Park to Island Road
- Traffic signal control upgrades
- Design of the first phase of the street light replacement project
- Worth Avenue Improvements
- Contamination assessment at the A-39 pump station (Phipps Park)

This month we are moving forward with:

- Resolution 100-10: an interlocal agreement with the City of West Palm Beach to allow installation of a new subaqueous sanitary sewer force main in conjunction with the City's new waterline. This new crossing will provide a second/redundant crossing to the line installed at Tangier Avenue in 1976. This will ensure the Town an alternate way to send sewage across the Lake Worth Lagoon should the 1976 line fail. By combining the construction of this sewage force main with the planned City of West Palm Beach water main, the Town will realize both a cost savings and minimize disruption to Town residents.

- Resolution 101-10: the preparation of plans and specifications for the necessary rehabilitation of sanitary sewer pump stations (A-42 and A-43) at Bellaria Condominium and the Atriums of Palm Beach respectfully. This project will allow increased pumping capability to allow sending all flow through the new subaqueous crossing as opposed to the Lake Worth system. This will allow the Town to realize a cost savings for sewage treatment disposal.
- Resolution 103-10: the design of the one section of sanitary sewer force main between stations A-42 and A-43. This is necessary to replace an aging section of force main. We are using the same consultant for this project as the previous station renovation project to eliminate redundant efforts and reduce cost.
- Resolution 105-10: awarding bid and construction phase services for the new subaqueous sanitary sewer force main in conjunction with the City's new waterline. We are using the same consultant for this project as the City of West Palm Beach and this has already eliminated redundant efforts and reduced cost during the design and permitting phase. We feel this arrangement will continue to save the Town money during the next phase of this project.
- Resolution 87-10: the design of the selected alternative for the D-15 (D-6, D-7) pump station at Lakeside Park. This will be presented separately at this same Town Council meeting.

In the coming months we will be requesting authorization for:

- Program Manager services to supplement our existing resources to complete the Accelerated Capital Improvement program
- Design of a new in-line sanitary sewer booster station (S-2) in Bradley Park
- Construction contracts for three storm water improvement projects that have already been designed
- Award of the second design phase of the street lighting replacement project
- Several design contracts for segments of sanitary sewer force mains that have reached the end of their useful life

The majority of the authorizations being requested are for design phase services. As these progress, the projects will move to the construction phase. We anticipate requesting several construction bid awards this fall in preparation for the next summer's construction window. We have used Construction Manager at Risk as an alternative contracting mechanism successfully in the recent past. Staff is actively seeking opportunities to group smaller projects into larger, comprehensive projects that would lend themselves to this contracting method. This approach will also help us control project cost and potential change orders, as well as minimize impacts to residents.

FUNDING/FISCAL IMPACT

Funding for this Accelerated Capital Improvement Program project is fully contained within the Bond Proceeds Construction Fund.

HPB:mrs

Attachment

cc. Jane Struder, Director of Finance
Eric B. Brown, Assistant Director of Public Works/Operations
James M. Bowser, Town Engineer

Department of Public Works - 2010 Capital Improvements - as of 09/03/10

PAY-AS-YOU-GO PROJECTS

Regular Capital Projects	Description	Study / Design	Architect/Engineer	Project Engineer	Construction	Contractor	Status
1	Town Hall Renovations (360 S. County Rd)	Complete	Bridges and Marsh	Mike	Substantially Complete	Hedrick Brothers	Awaiting action from FDOT, regarding north end of Town Hall. Door replacement still to be done. Wantman has done as built survey. Staff currently reviewing survey.
2	Worth Avenue Improvements (Worth Ave. S. Ocean to Coconut)	Complete	Mark Marsh, George Sanchez, Kimley Horn	Eric/Mike	In Progress	Burkhart Construction	100% of the water is complete; storm work is 100% done. Sidewalk work is 75% done. 1st lift of asphalt is 90% complete. Landscape is 75% complete. South County should open September 17.
3	Flagler Memorial Bridge (DOT Project)	In Progress	Kimley Horn & Associates	Jim	Expected to commence in 2011	TBD	The Town's involvement is limited to assisting the DOT with utility coordination, feedback for aesthetic features, etc. FDOT has short listed five firms to bid on the reconstruction of the Flagler Memorial Bridge. Bids are due in October with an anticipated bid award in December 2010.
4	Fuel Tank Replacement (Town wide)	Complete	Kimley Horn & Associates	Jeff	Substantial completion. Addressing end of project issues.	Glasgow	Project to be closed out once all invoices have been paid. A 39 assessment/remediation has been set up as its own independent project per Res. 96-10 (see line item#39).
5	Par 3 Golf Course Improvements (Par 3 - S. Ocean Blvd)	Complete	Raymond Floyd, Kimley Horn	Mike	Complete	QGS, Chaz Equip, Loyre Christenson	D.S. Eakins completed installation of manate grates. Final invoices pending.
6	D9 Pump Station Improvements (west end of Mediterranean)	Complete	Kimley Horn & Associates	Mike	Construction contract issued.	Murray Logan Construction	Extra electrical service work was completed. Murray Logan has started the demo work and moving controls and hydraulic pump out of the building temporarily.
7	Southern Blvd. Traffic Circle Landscaping (Southern Blvd/A1A)	Complete	Allen Stopek	Jeff	In Progress	TOPS Staff/ Efforescence	Construction completed. FDOT permit to be closed out after as-builts reviewed and approved.
8	D-16 Standby Generator (256 Jungle Rd)	Complete	Specifications identified by Town staff.	Doug	Scheduled for replacement in Summer 2010	TBD	Replacement generator bid approved at June Town Council meeting.

Department of Public Works - 2010 Capital Improvements - as of 09/03/10

PAY-AS-YOU-GO PROJECTS

Regular Capital Projects	Description	Study/Design	Architect/Engineer	Project Engineer	Construction	Contractor	Status
9	Pondleton Improvements (Pondleton west of S. County)	In Progress	C3IS	Jeff	Scheduled for 2011	TBD	Purchase order is being processed for design work.
10	D-12 Pump Station - Discharge Pipe (269 Seminole)	N/A	N/A	Doug	Summer 2010	D.S. Eskins	Pump No. 2 discharge pipe work underway and all work to be complete by 9/10/10.
11	Lift Station #22 (NW 23rd St/Tamarind, WPB)	Complete	Kimley Horn & Associates	Jeff	TBD	Murray Logan Construction	On hold until further notice. May not be needed due to possible in-line station at S-2 (Bradley Park).
12	Ibis Isle Bridge Dredging (Ibis Isle Bridge)	In Progress	Town Staff	Jim	TBD	TBD	This is a resident funded project. Letters of no objection sent to 10 adjacent property owners. These letters are needed to complete the SF-WMD permit application.
13	Annual Milling & Resurfacing (Town wide)	N/A	N/A	Mike	Summer 2010	Community Asphalt \$235,000	Awaiting PO for manhole, valve and catch basin adjustment. Paving is planned to start the week of September 13.
14	North Fire Station Windows (300 N. County)	Complete	Mark Marsh	Eric	Substantial completion.	Palm Beach Glass	Resolving minor punch list items.
15	Flashing Beacon for North Fire Station (300 N. County)	In Progress	American Consulting Engineers	Jeff	Oct/Nov 2010	TBD	Consultant completing final revisions.
16	Undergrounding FPL Electrical Utilities	In Progress	Brammon & Gillespie	Jim	TBD	TBD	Currently working with Via Fontana, Everglades Island, Lake Towers, East Inlet Drive, Algoma Rd/Via Palma, which are in different stages of project planning
17	Tanger Avenue Water, Sewer & Drainage Improvements	Complete	C3IS	Jeff	Scheduled for Summer 2011	TBD	Awaiting direction regarding pre-qualified contractors for underground work. Drawings are complete and with Purchasing.

Department of Public Works - 2010 Capital Improvements - as of 09/03/10

PAY-AS-YOU-GO PROJECTS

	Regular Capital Projects	Description	Study/Design	Architect/Engineer	Project Engineer	Construction	Contractor	Status
18	Contamination Assessment	Determine extent of ground contamination and remediation costs	Study	TBD	Jeff	Scheduled for 2011	TBD	Project approved with acct funded per Res. No. 86-10. Kinley-Horn preparing to begin supplemental assessment to take additional samples to determine limits of contamination. With results, we'll know if boundaries have been defined. If so, we'll initiate transition to remediation; if unsuccessful, continue assessment efforts.
19	Expulsor Stations Replacement	Design replacement stations for single family homes Sloan's to Wildener's Curve	Design	CJTS	Chuck	Scheduled for 2010	TBD	Met with Town Attorney on 8/27/10 to develop agreements with residents regarding payment and installation of replacement pump stations per Town Council directive.

Department of Public Works - 2010 Capital Improvements - as of 09/03/10

ACCELERATED PROJECTS

Regular Capital Projects	Description	Study/Design	Architect/Engineer	Project Engineer	Construction	Contractor	Status
1	Sub Aqueous Sewage Force Main (intercoastal, under Lake Worth)	In Progress	Kimley-Horn & Associates	Jim	Spring 2011	TBD	Collaborating with WPB's water main installation to save costs. In design phase. Approval of an Interlocal Agreement for is on the September 2010 Town Council meeting agenda. Plans 99% complete. Palm Beach County Health Dept. permit has been issued. ACOE permit and easement crossing the intracoastal water way have been issued. FDEP permit complete but not issued. FDEP easement crossing the Lake Worth Lagoon in process.
2	Street Lighting Improvements (Various locations Town wide)	In Progress	SGM	Mike	Scheduled for 2012	TBD	SGM has submitted a proposal to do all the lighting design. Proposal was rejected. Staff is currently reviewing the revised proposal. For award.
3	D-4 Pump Station (445 North Lake Way)	Pending	C3TS	Chuck	Scheduled for Summer 2011	TBD	Proposal rec'd from design consultant. Purchase order being processed for design work.
4	D-10 Pump Station (1060 North Lake Way / Via Marlin)	In Progress	Kimley-Horn & Associates	Jeff	Scheduled for 2012	TBD	Design is in progress towards 60% submittal. Development Review and ARCOM submittal packages are currently being prepared. Pre-App Submittal is 9-14-10. Site inspection (including inside the wetwell) is scheduled for mid September.
5	D-15 (D-6 & D-7) Pump Station (420 S. Lake Drive)	In Progress	Mock Root and Associates	Mike	Scheduled for 2011-2012	TBD	Council asked for additional info at August meeting. Will present at September Council meeting. Mock Root has revised presentation for Sept Council and staff is reviewing it.
6	Traffic Signal Upgrades (Various locations Town wide)	N/A	N/A	Electrical Bureau	Scheduled for 2011-2012	TBD	Project is primarily replacement in existing intersections. Some work may be done by Town staff.
7	"E" Stations (Various locations Town wide)	TBD	TBD	Jim/Doug	Scheduled for 2011-2012	TBD	Proposals requested. Firm has not yet been selected.
8	North Lake Way Drainage Improvements (Orange Grove Ln to Garden Ave) and Laurian Lane (No. Lake Way to No. Ocean Blvd.)	Complete	Kimley-Horn & Associates	Mike	Scheduled for Summer 2011	TBD	Awaiting direction regarding pre-qualified contractors for underground work. Drawings are complete and with Purchasing. (No change.)

Department of Public Works - 2010 Capital Improvements - as of 09/03/10

ACCELERATED PROJECTS

Regular Capital Projects	Description	Study/Design	Architect/Engineer	Project Engineer	Construction	Contractor	Status
9	North Lake Way Drainage Improvements (El Dorado Ln. to Plantation Rd.)	Complete	C3IS	Jeff	Scheduled for Summer 2011	TBD	Awaiting direction regarding pre-qualified contractors for underground work. Drawings are complete and with Purchasing.
10	E-3 Force Main (1020 North Lake Trail)	TBD	TBD	Chuck	Scheduled for Summer 2012	TBD	Will be working on scope of work and timing over the next two weeks. Will probably need to consider alternatives to a new, replacement line; probably pipe bursting or lining if the line is found to warrant updating.
11	A-39 to A-42 Force Main Improvements (3001 - 2478-2171 S. Ocean)	In Progress	AECOM	Jeff	TBD	TBD	Anticipate 30% plans by 9/17/10.
12	A-39 to A-7 Force Main Replacement (S. Ocean/S. County at Island Rd)	In Progress	Mathews	Jeff	TBD	TBD	Phase I design 95% complete. Mathews Consulting working on tunnel modifications. Phase II design 30% complete. MC is currently performing soft digs.
13	A-5 Force Main - Bypass S-2 (9 Lake Tr/Bradley Park)	TBD	TBD	Chuck	TBD	TBD	Project depends upon decision on new force main (subaqueous) and in-line pump station.
14	A-7 Pump Station Improvements & Inline Booster Station Installation	Pending	Kimley Horn & Associates	Jeff	TBD	TBD	Design work is in process. Project schedule is forthcoming.
15	A-7 Force Main - A-7 to Hammon Ave. (S. County/ Island to Hammon)	TBD	TBD	Chuck	Scheduled for Summer 2012	TBD	Draft scope received on 8/4/10 and reviewed on 9/1/10. Anticipate requesting Council approval at the October Council meeting.
16	A-42 & A-43 Pump Stations (3000 & 3400 S. Ocean Blvd.)	Pending	AECOM	Chuck	Scheduled for Summer 2011	TBD	Proposal being revised per review of 8/31/10. On September Town Council Agenda.

Department of Public Works - 2010 Capital Improvements - as of 09/03/10

ACCELERATED PROJECTS

Regular Capital Projects	Description	Study/ Design	Architect/Engineer	Project Engineer	Construction	Contractor	Status
17 D-4 Pipe Repair (44S North Lake Way)	Install lining for existing stormwater piping where excessive inflow & infiltration occur.	N/A	N/A	Jim / Doug	TBD	TBD	Alternative repair methods are being investigated.
18 S. County Force Main Design (S. County/Royal Poinciana) & A-4 Force Main (A-4 @ Breakers to Barton Ave or S. County Barton Ave)	Replace force main from Barton Ave to Coconut Row along S. County Rd. & Royal Poinciana Way and Replace Force Main from A-4 @ Breakers to Barton Ave or S. County Barton Ave)	Pending	Mathews	Chuck	Scheduled for Summer 2011	TBD	Draft scope received on 8/4/10 and reviewed on 9/1/10.
19 WPB Force Main Replacement	Route study for replacement force main in WPB	Study	Kimley Horn & Associates	Jim	Scheduled for 2011 or 2012		Route study underway. Rankings of four routes received for review prior to recommending one to WPB.
20 S-2 Inline Booster Station	Replace S-2 with Inline Booster Station	Design	Kimley Horn & Associates	Jim	Scheduled for 2011	TBD	Need to develop draft scope of work after route study completed and accepted.
21 A-42 to A-43 Force Main	Replace existing 10' FM with new 10" FM	Pending	AECOM	Chuck	Scheduled for 2012	TBD	Proposal being revised per review of 8/31/10. On September Town Council Agenda.
22 Program Manager RFQ	Develop RFQ for Program Manager for Accelerated CIP	N/A	N/A	Chuck	N/A	N/A	Proposals (18) opened on 9/1/10. Ranking meeting on 9/13/10 and Presentations on 9/27/10.

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - Old Business

Agenda Title

RESOLUTION NO. 87-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$593,000 to Mock, Roos & Associates, Inc., for the D-15 (D-6 & D-7) Pump Station Design and Bid Administration Services, Establishing a Total Design Phase Budget of \$620,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works
- Resolution No. 87-10
- D-15 Feasibility Study
- Email Correspondence dated September 7, 2010, from RPHA

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Award of D-15 (D-6 & D-7) Pump Station Design Services, Accelerated Capital Improvement Program
Resolution No. 87-10

Date: September 2, 2010

STAFF RECOMMENDATION

Staff requests Council direction concerning selection of alternatives. Alternative A is not recommended.

Also, staff recommends that Town Council approve Resolution No. 87-10 authorizing the award of the D-15 (D-6 and D-7) Pump Station Design and Bid Services in the amount of \$593,000 to Mock, Roos & Associates, Inc., and establishing a not-to-exceed design phase budget of \$620,000.

GENERAL INFORMATION

Contained within the Accelerated Capital Improvement Program is the design and construction of the D-15, D-6, and D-7 Pump Station renovations at Lakeside Park. This station consists of one above ground structure (D-15, near the Australian Docks parking lot) and two below grade structures (D-6 and D-7, within the park near the existing seawall). D-15 houses the engines and controls that run the two below grade stations. The below grade stations house large hydraulic pumps that sit in deep concrete vaults ("wet wells"). Storm water from the midtown area (Royal Palm Way to Worth Ave and South Ocean Blvd to Lakeside Drive) is collected in the drainage system and pumped into the Intracoastal Waterway.

This station is 25 years old and has reached the end of its useful life. Maintenance and reliability issues occur regularly. A preliminary budget was established that would allow for the reuse of all of the existing structures and simply replace the hydraulic system (pumps, controls, and emergency generators). A project budget of \$3,450,000 was established.

Also, during the development of a master plan for Lakeside Park, the residents voiced a desire to maximize green space and improve the appearance of the park.

Council approved staff's recommendation to retain a consultant to develop alternatives for renovation of the storm water station. Alternatives were to address both the reliability of the station as well as residents' wishes to improve the park. Mock, Roos & Associates, Inc., has evaluated

several alternatives. At the August Town Council meeting, Council requested additional information regarding constructing a control building at, or near the existing workshop adjacent to the S-1 pump station. We have generated two new possible alternatives based on that direction (Alternatives E and F below). We will provide a brief summary of all alternatives developed. For your convenience, we have also attached a preview of the presentation that will be presented to Council.

Alternatives A and B Replacing Existing Hydraulic Systems with New Hydraulic Systems

At the August Council meeting, Alternatives A & B were discussed with Council. Both alternatives consisted of replacing the hydraulic system with a hydraulic system and replacing a portion of the controls. Alternative B added modifying the wetwells to manufacturers recommendation and constructing a new control building. The costs for these options were estimated to be approximately \$4,000,000 and \$6,700,000 respectively. Staff does not recommend Alternative A. Alternative B generated very little interest.

The next four (4) alternatives (C-F) involve upgrading both D-6 and D-7 to electrical submersible pump stations with new electric controls, along with new generators to operate the stations in case of power failure.

Alternative C - New Wetwells and Single Control Building

Staff and consultants studied the costs of new wetwells that would be constructed directly adjacent to the existing wetwell. This would allow the existing stations to operate throughout the construction, minimizing the flooding potential in the Midtown area. A single new control building would be constructed just south of the Brazilian parking area. The new control building would meet the current Florida Building code, and would increase green space in the park once D-15 was demolished. The cost for this option is estimated to be approximately \$7,500,000.

Alternative D - New Wetwells and 2 Control Buildings

Similar to Alternative C, the project would consist of two new wetwells adjacent to the existing ones. With this alternative there would be two new smaller control buildings. One building would be located to the south of the Brazilian parking area. The second building would be located on the north side of the Peruvian parking area. Even with two smaller control buildings the park would increase green space once D-15 was demolished. The increase would not be as great as Alternative C. The cost to construct this option is estimated to be approximately \$7,600,000.

Note: The controls for D-6 and D-7 will be independent of each other regardless of being housed in a single building or two separate ones. (Alternative C and D respectively.)

Alternative E - Controls Located at S-1

During the initial study, staff and the consultants had reviewed the alternative of moving all of the controls to the workshop near S-1. To do this, the S-1 workshop would have to expand a minimum of 1,000 square feet, increasing S-1 by fifty percent, to house both the D-6 and D-7 controls and accompanying generators. Water Resources would lose the ability to have a workspace to work on pumps, generators and any controls. Power to stations D-6 and D-7 would have to be greatly over-designed to accommodate voltage drops due to the length of run. Each station would also need a block wall constructed at the wet well (near seawall) for secondary controls and disconnects to be sure the pumps work properly and allow staff to service them. The cost for this construction is estimated to be approximately \$8,500,000. This does not include the cost of relocating the workshop.

Alternative F - D-6 Controls Located at S-1 and New Control Building for D-7

In this alternative, the D-6 controls would be at S-1 and the building would still be expanded approximately 1,000 square feet. Water Resources staff would have a limited work space, unlike Alternative E, which had none. Again, the electrical runs would still be long, but not to the same extent as Alternative E. The cost for this construction is estimated to be approximately \$8,000,000. This does not include the cost of relocating the workshop.

In Alternatives E and F, the existing building foot print for S-1 is not conducive to installing new generators and controls without some form of expansion. The current building has a lot of unknowns, such as what portion meets current Florida Building code. Secondly, could the generators themselves be located in the building and operate per manufacturer's criteria. The new expansion was based on having the new generators and a portion of the new controls installed with the existing building housing the remaining controls. Staff has reviewed the options and prepared to move Water Resources out of S-1, as space will be very limited. This space would then be turned into some form of storage.

Alternatives C - F increase green space within the park. Staff spoke with residents along South Lake Drive and found them to be agreeable to Alternative D when originally presented, along with some additional options that showed the new control building(s) in a variety of locations. Removal of the workshop and associated Water Resources staff (either Alternative E or F) will be well received by the adjacent residents.

Staff has negotiated a Design and Bid Phase Services contract with Mock, Roos & Associates, Inc., in the amount of \$593,000. Staff also recommends a project contingency resulting in a total estimated design budget of \$620,000. The cost of the services is based on "worst case" scenario of designing two wetwells and two control buildings.

Construction phase services for the D15 (D6 and D7) station will follow later in FY 2011.

SPECIAL CONSIDERATION

Please note that response times to sanitary and stormwater emergencies will be negatively impacted if staff is moved out of S-1. Additionally, there will be a cost associated with relocation. Staff has not had the opportunity to fully evaluate our potential solutions, but anticipate the expenses to be on the order of \$60,000 to \$75,000. Also, although this relocation would most likely be dictated by selection of Alternative E or F, it could be accomplished as part of any of the project alternatives, if Town Council so directs.

Lastly, staff wants to make the residents and Council aware that the project could take up to two summers to complete. The first summer, the contractor would be focusing on constructing the new facilities. This construction will be a disruption to the majority of the park. Residents will hear temporary generators and pumps running throughout the summer, as all are necessary to construct the facilities. Staff will try to work with neighboring residents when possible where conflicts may arise. Please note that certain activities or parts of the schedule will be difficult to alter in order to complete the project in a timely manner. Demolition and removal of existing infrastructure would be accomplished the second summer season.

FUNDING/FISCAL IMPACT

Funding for this Accelerated Capital Improvement Program project is fully contained within the Bond Proceeds Construction Fund and the General Capital Improvements Fund. Although the majority of the alternatives exceed original estimates, substantial savings have already been achieved on other projects (i.e. elimination of lift station 22 and the new sub-aqueous crossing). Also, Bond Counsel has confirmed that the Town has the ability to modify the overall scope (adding or deleting projects) during the three to four year life of the Accelerated program.

TOWN ATTORNEY REVIEW

This is a standard resolution in a form previously approved by the Town Attorney for legal form and sufficiency.

HPB:mrs

cc. Jane Struder, Director of Finance
Eric B. Brown, Assistant Director of Public Works/Operations
Douglas Terry, Water Resources Division Manager
Lynda Venne, Purchasing Agent
D-9 Public Works File
Michael Roach, Project Engineer

RESOLUTION NO. 87-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT FOR \$593,000 TO MOCK, ROOS & ASSOCIATES, INC., FOR THE D-15 (D-6 & D-7) PUMP STATION DESIGN AND BID ADMINISTRATION SERVICES, ESTABLISHING A TOTAL DESIGN PHASE BUDGET OF \$620,000 FOR SAID IMPROVEMENTS, AND AUTHORIZING THE TOWN MANAGER TO TAKE ACTIONS NECESSARY TO COMPLETE SAID IMPROVEMENTS.

* * * * *

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

Section 1. The D-15 (D-6 & D-7) pump station design and bid administration services contract is hereby awarded to Mock, Roos & Associates, Inc., for their proposal amount of \$593,000 with a total design phase budget of \$620,000.

Section 2. The Town Manager is hereby authorized and directed to execute a purchase order on behalf of the Town of Palm Beach for design services with Mock, Roos & Associates, Inc.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of the design services and bid administration services for the D-15 (D-6 & D-7) pump station.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

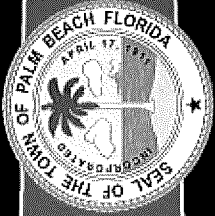
Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

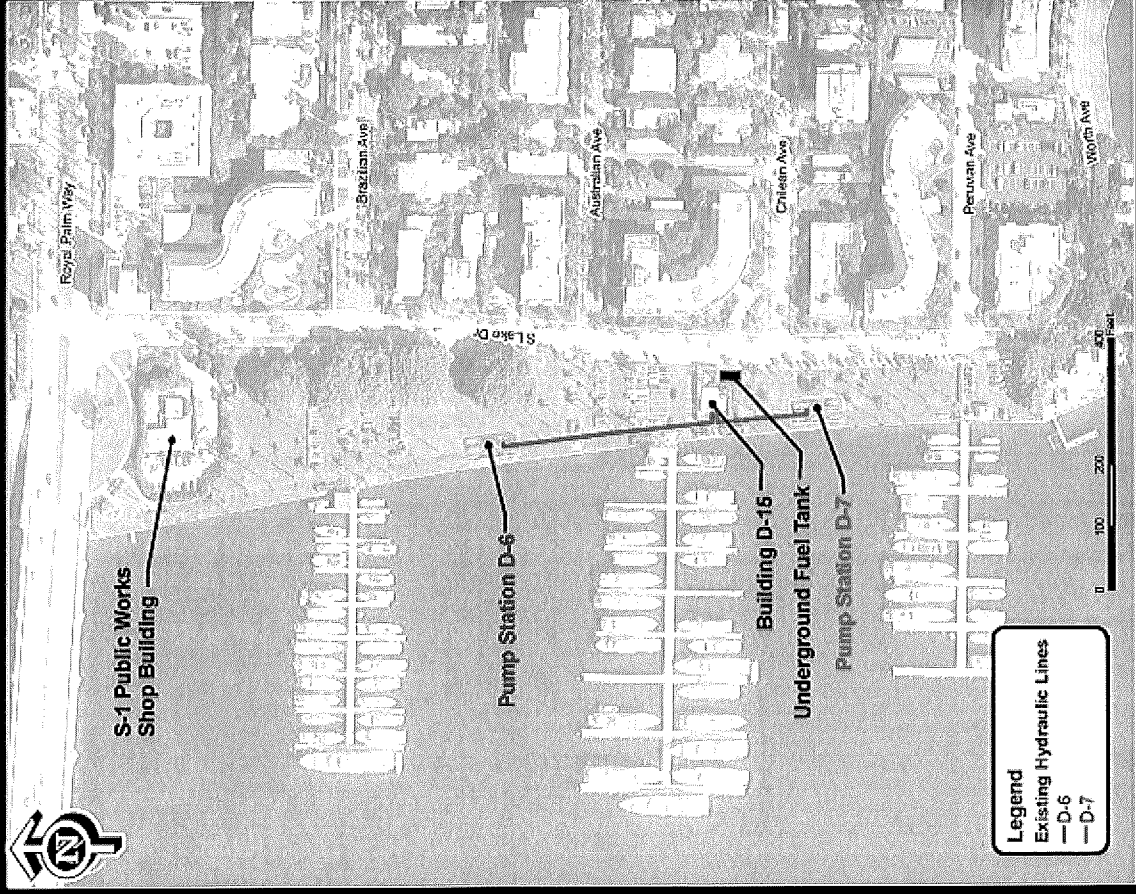
Robert N. Wildrick, Town Council Member



Stormwater Pump Stations D-6 and D-7 Feasibility Study



Existing Facilities



- Located in Lakeside Park
- Provides Flood Protection for Midtown area
- Outdated Technology
- 104,000 gpm pumping capacity (each station)
- Wetwells constructed in 1960's
- Wetwell addition and D-15 constructed in 1985

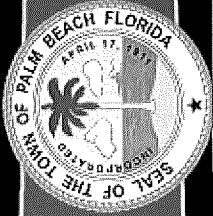


Alternatives

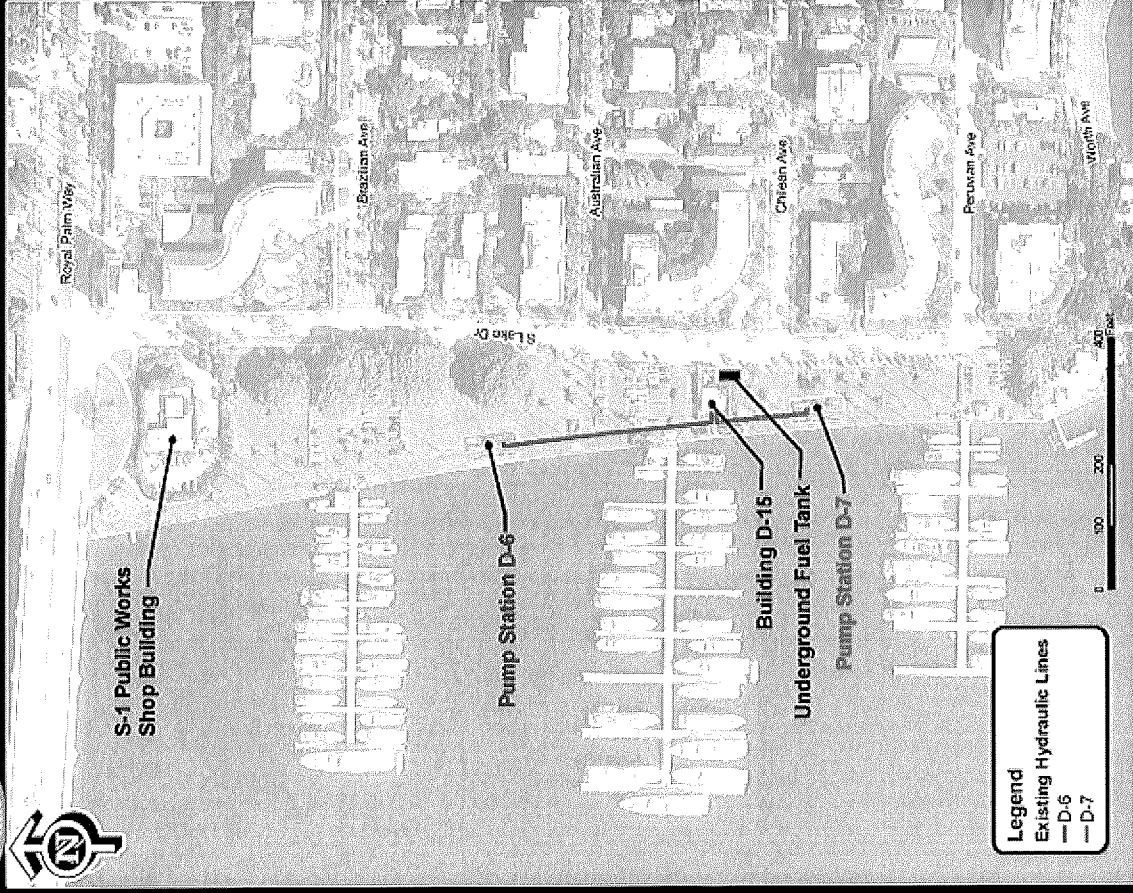
Hydraulic Diesel-Driven Alternatives

Alternative A – Replace existing equipment in kind

Alternative B – Replace existing equipment in kind and upgrade existing facilities to code



Alternative A



Cost

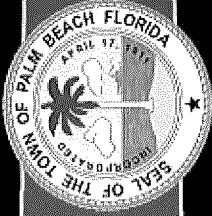
- \$3.5-4.0 Million

Pros

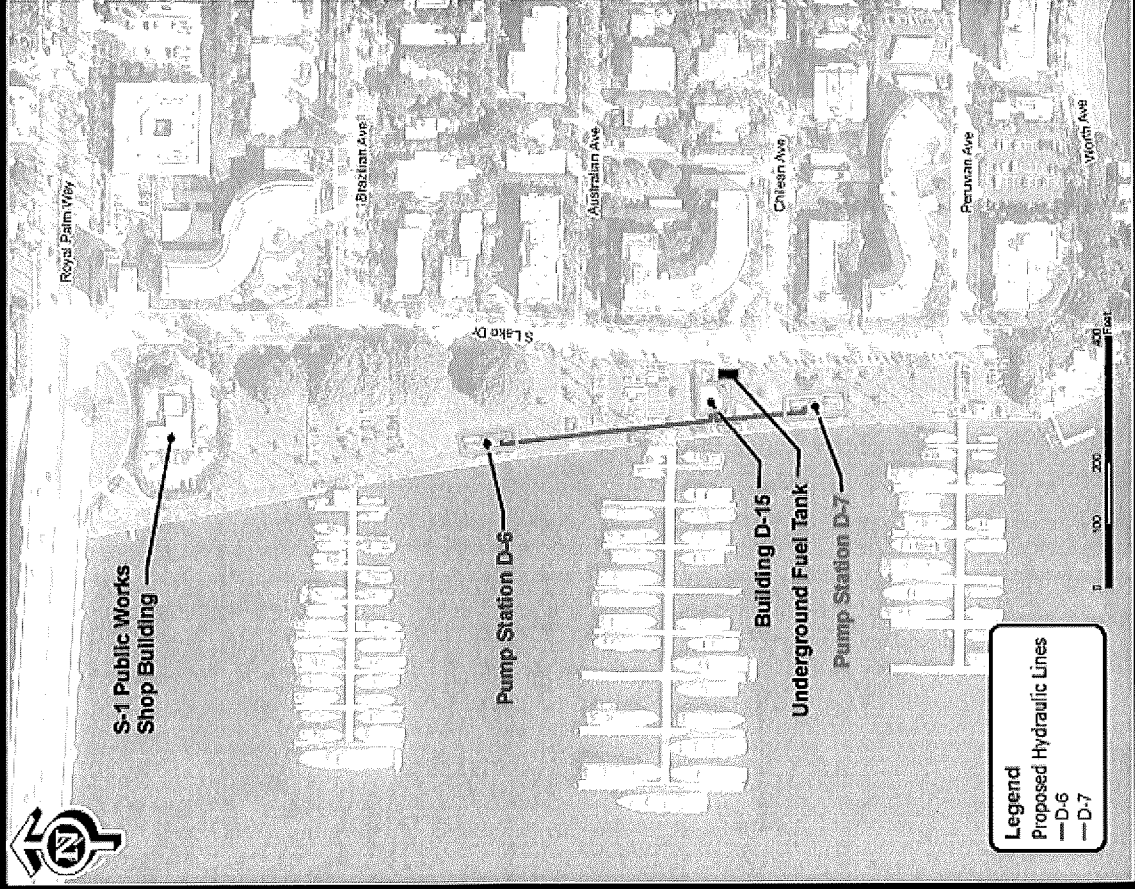
- Reduced Capital Cost

Cons

- Does not meet current codes
- Does not meet manufacturer's recommendations
- Increased flooding potential during construction
- Outdated technology



Alternative B



Cost

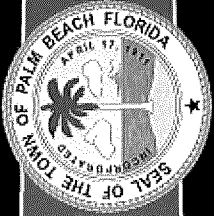
- \$6.7 Million

Pros

- Meet current codes
- Meet manufacturer's recommendations

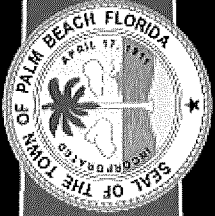
Cons

- Increased flooding potential during construction
- Outdated technology
- Constructability Issues



Benefits of Updating to Electric Driven

- Increased Green-Space in Park
- Reduced Noise in Park
- Preferred by Adjacent Residents
- Increased Reliability of Flood Protection
- Eliminates Environmental / Safety Concerns
- Reduced Operation and Maintenance Costs
- Promotes Consistency of Town's Stations
- Increased Life Expectancy with New Facilities



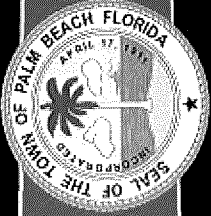
Alternatives

Alternative C – *Update equipment and house in new single control building*

Alternative D – *Update equipment and house in two new separate control buildings*

Alternative E – *Update equipment and house in modified S-1 building*

Alternative F – *Update equipment and house in modified S-1 building and in new control building*

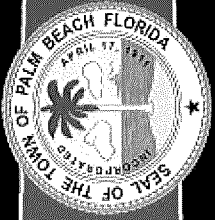


Alternatives

These proposed Alternatives require New Control Building(s) in Park

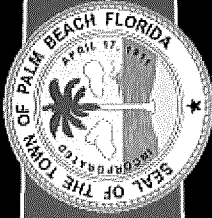
Alternative C – *New wetwell, update equipment and house in new single control building*

Alternative D – *New wetwell, update equipment and house in two new separate control buildings*

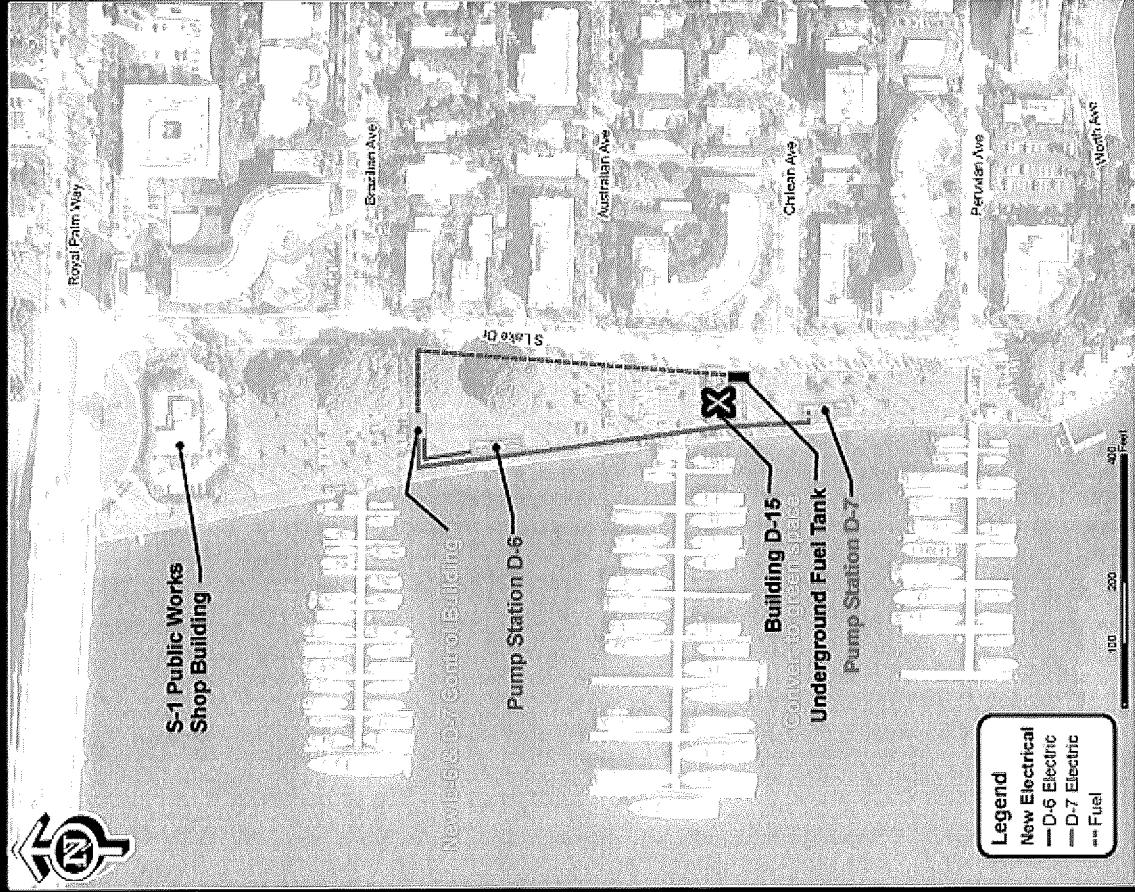


Alternative C

New single control building



Alternative C



Cost

- \$7.5 Million

Pros

- Optimum Operation and Maintenance Scenario
- Only one building added to Park
- Screened by existing trees

Cons

- Larger building than Alternative D in Park (still smaller than D-15)
- Long Electrical run to D-7



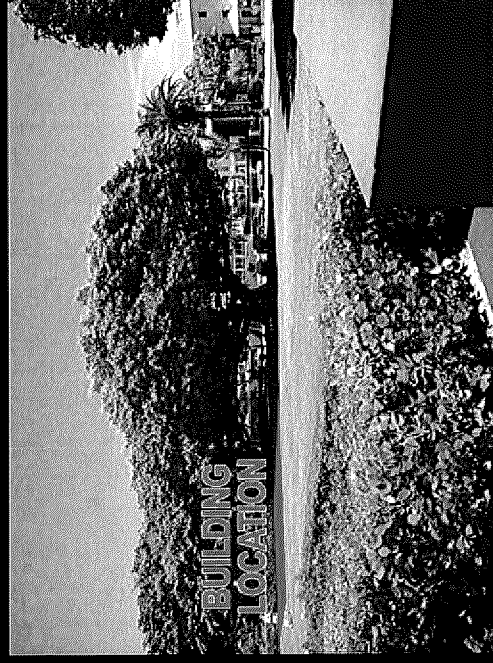
Alternative C



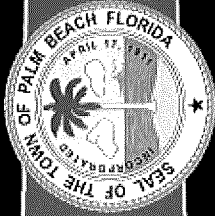
D-6 and D-7 Control Building



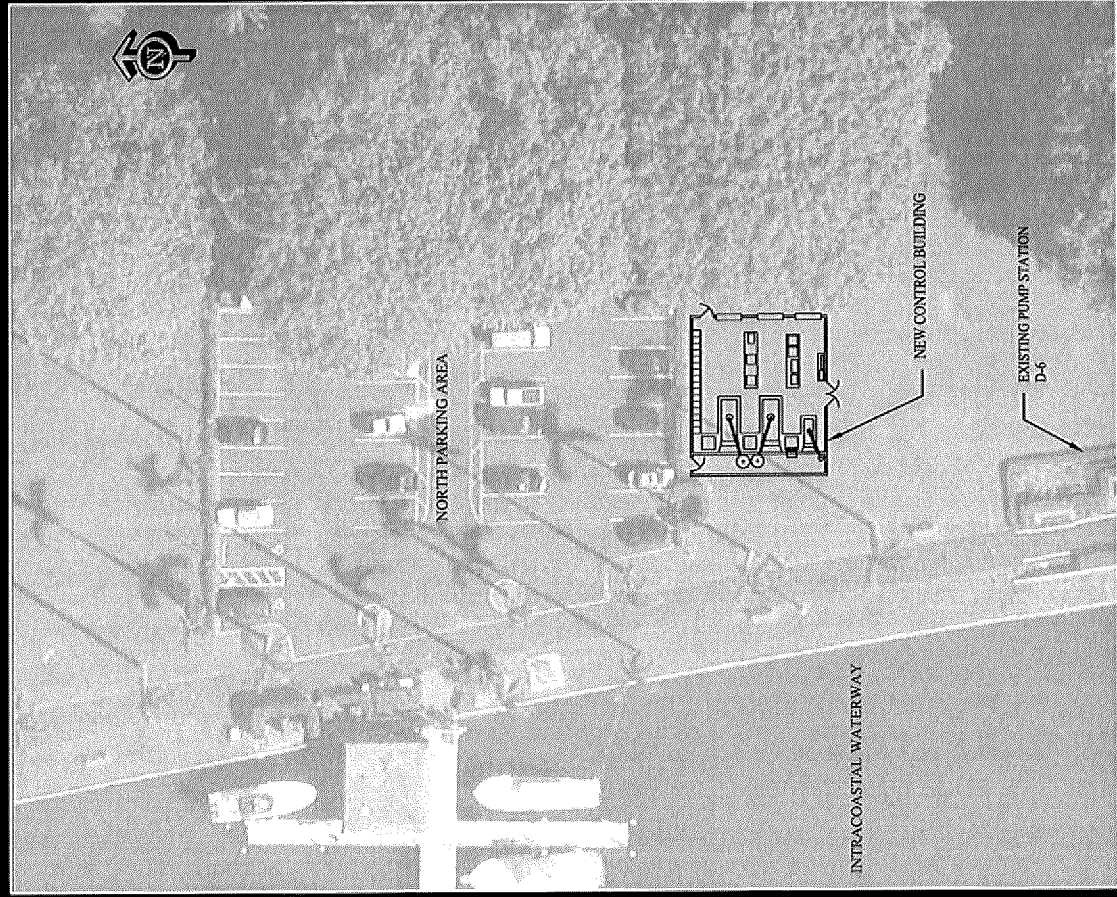
Looking SE



Looking NE

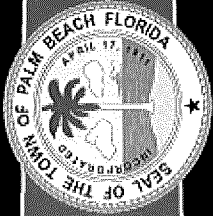


Alternative C



New D-6/D-7 Building Size

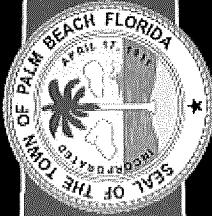
- 2,100-2,200 Sq. Ft.
- Existing D-15 footprint approximately 2,800 Sq. Ft.



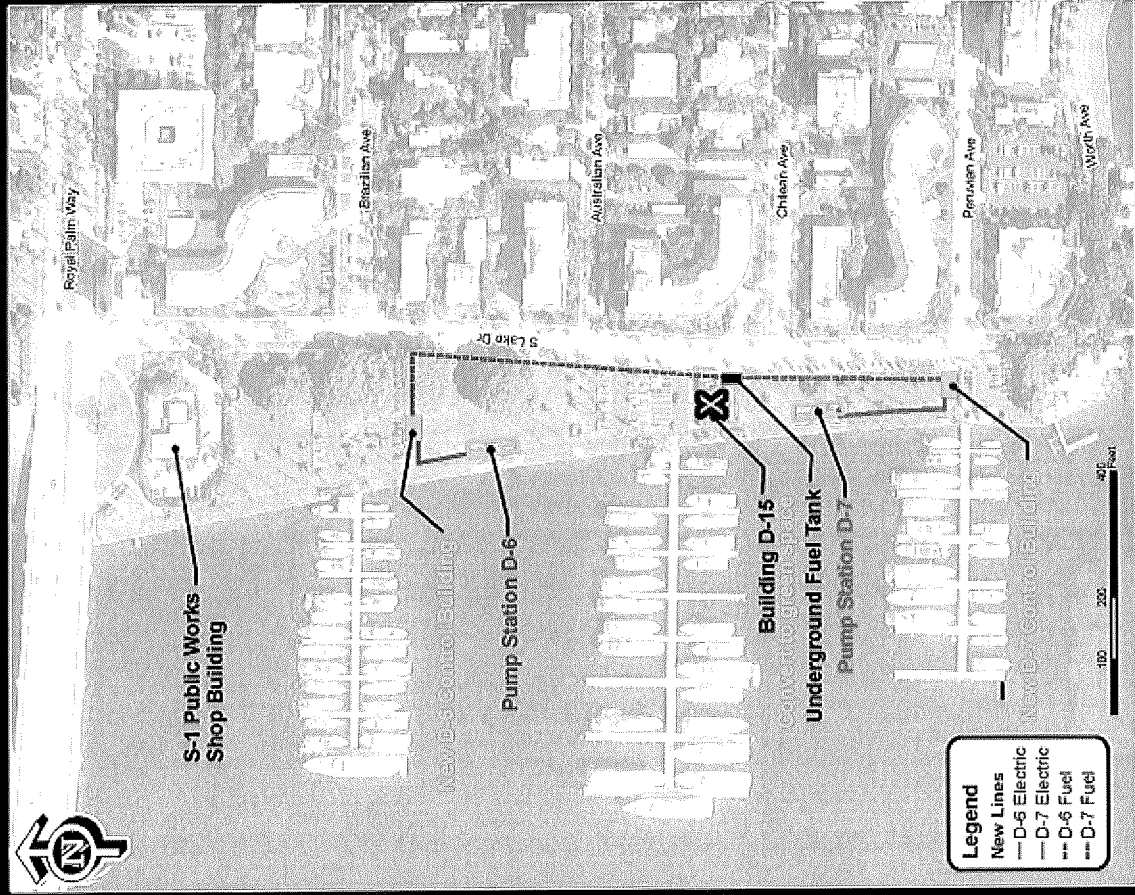
Alternative D

New North control building (for D-6)

New South control building (for D-7)



Alternative D



Cost

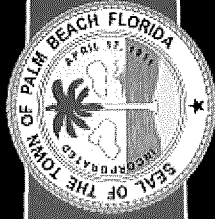
- \$7.6 Million

Pros

- Smaller Buildings in Park
- Preferred by Residents (not located at S-1)

Cons

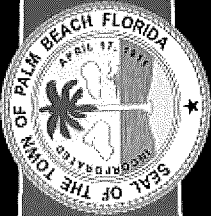
- New buildings in two locations in Park



Alternative D



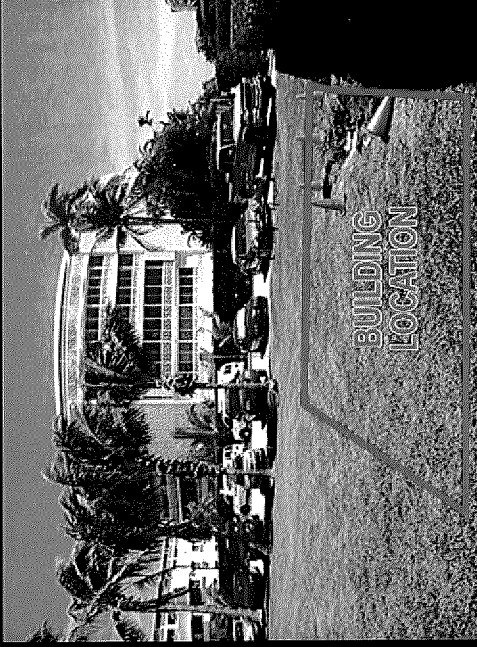
- D-6 Control Building
- Building in same location as Alternative C
- 800 Sq. Ft. smaller (35% smaller) than Alternative C



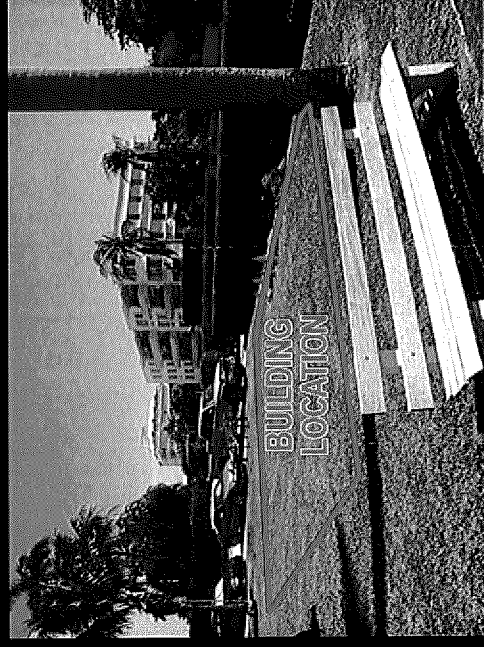
Alternative D



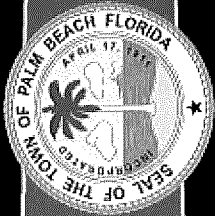
D-7 Control Building



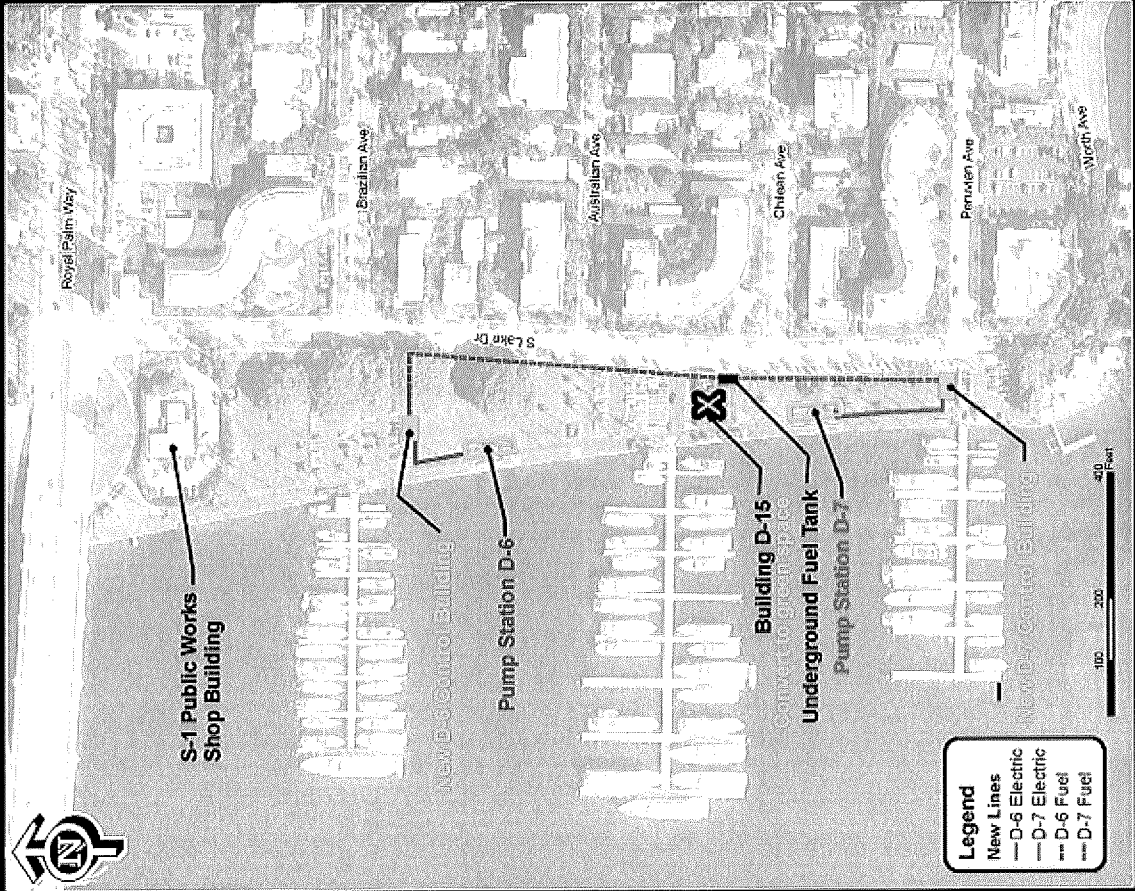
Looking E



Looking SE



Alternative D



New D-6 Building Size

- 1,300-1,400 Sq. Ft.

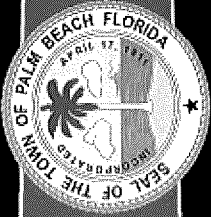
New D-7 Building Size

- 1,300-1,400 Sq. Ft.

Total new Building footprint Size

- 2,600-2,800 Sq. Ft.

- Existing D-15 footprint approximately 2,800 Sq. Ft.



Alternatives

These proposed Alternatives require use and modification to existing S-1 Building

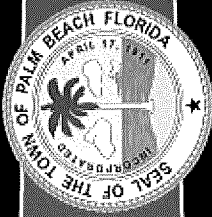
**Alternative E – New wetwell, update equipment
and house in modified S-1 building**

**Alternative F – New wetwell, update equipment
and house in modified S-1 building
and in new control building**



Alternative E

Modify S-1 building



Alternative E

Cost

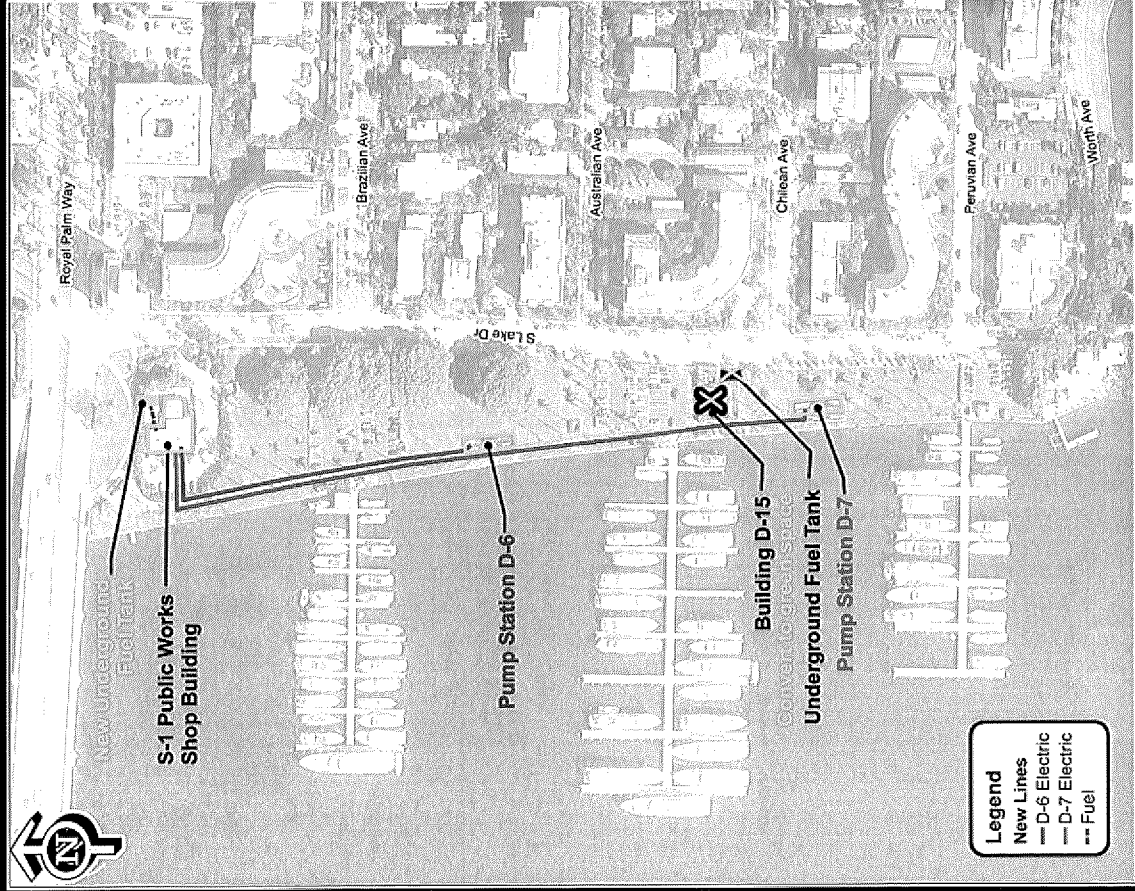
- \$8.5 Million

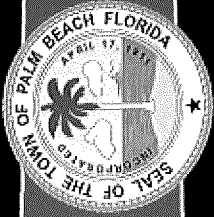
Pros

- No new buildings in Park
- Optimum Operation and Maintenance scenario

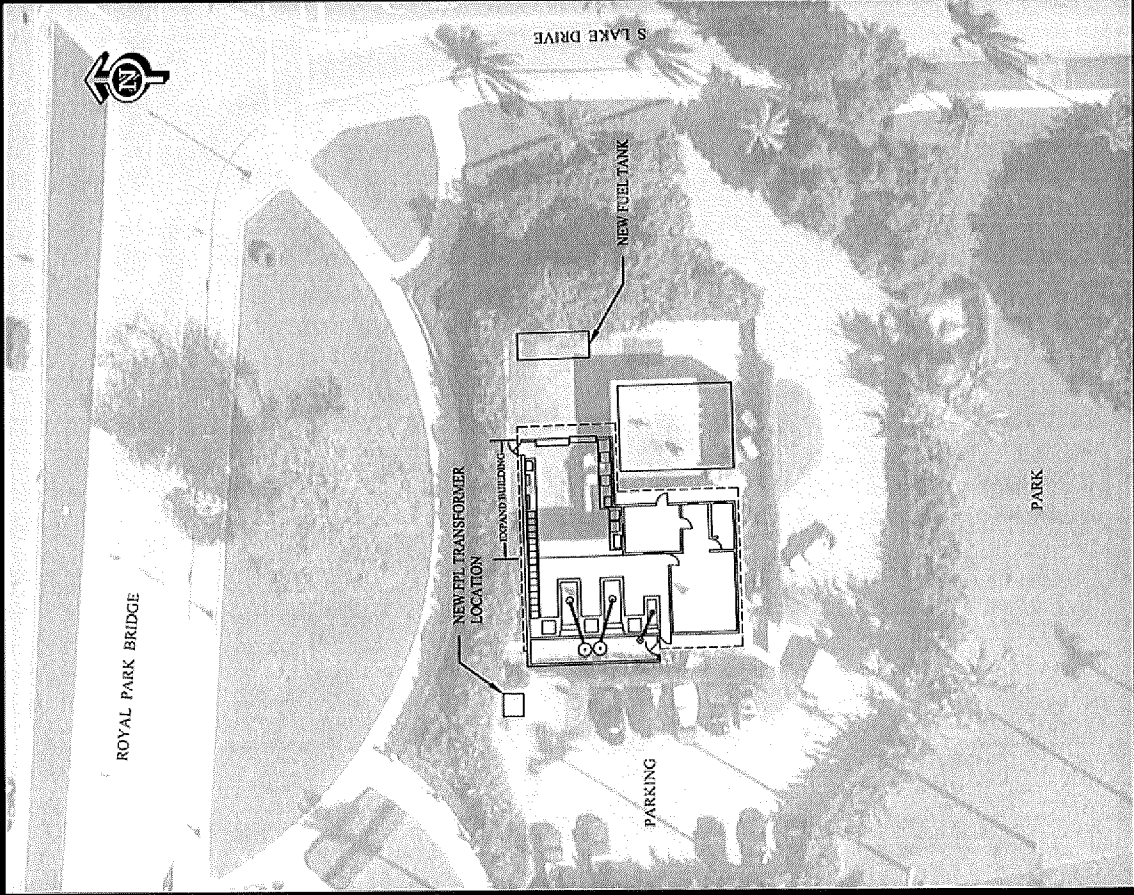
Cons

- S-1 building must be expanded to accommodate facilities
- Eliminates Shop Area at S-1
- Excessive Cost of electrical run to D-7 (\$2.4 Million)
- Reliability concerns of long electrical run for D-7



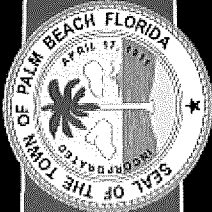


Alternative E



S-1 Building Size Expansion

- Min. expansion of 1,000 Sq. Ft.
- Also using all of existing shop space to house equipment
- Assumes no major building code issues/costs



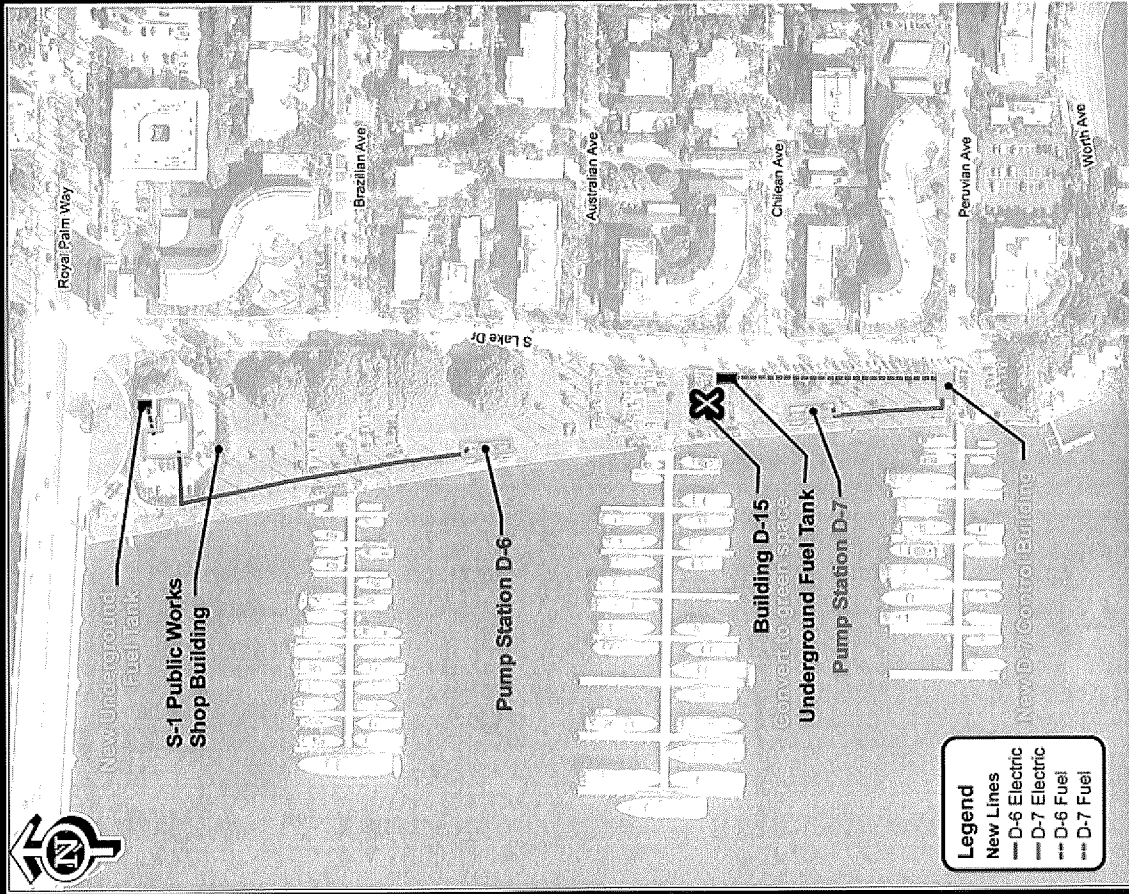
Alternative F

Modify S-1 building (for D-6)

New South building (for D-7)



Alternative F



Cost

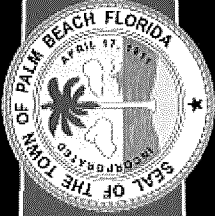
- \$8.0 Million

Pros

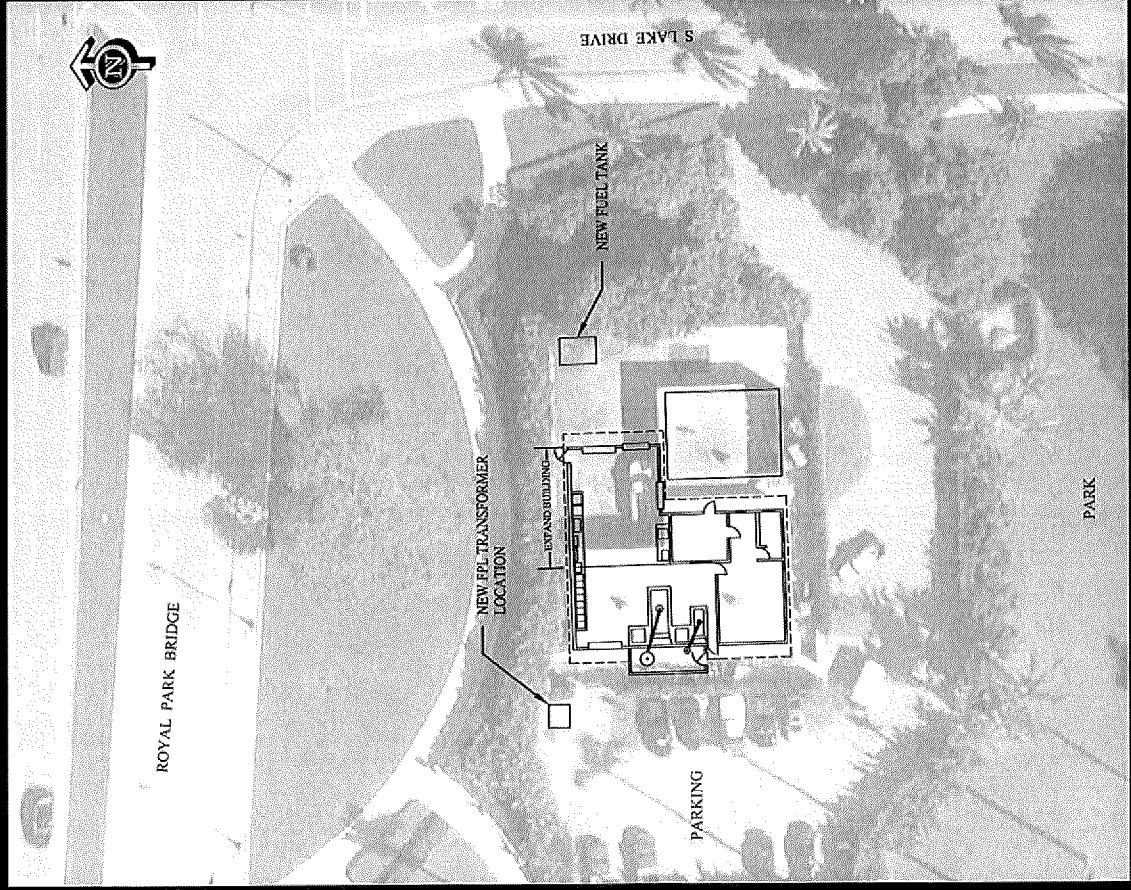
- Only one building added to Park
- Eliminates long electrical run to D-7

Cons

- S-1 building must be expanded to accommodate facilities
- Greatly Reduces/Eliminates S-1 Shop Area/function



Alternative F



S-1 Building Size Expansion

- Min. expansion 1,000 Sq. Ft.
- Also using all of existing shop space to house equipment
- Assumes no major building code issues/costs

New D-7 Building Size

- 1,300-1,400 Sq. Ft.

Questions

End of Presentation

From: Ageades@aol.com
To: pbrazil@townofpalmbeach.com
Date: 09/07/2010 07:56 AM
Subject: RPHA Position Statement

Mr. Paul Brazil
Public Works Director
Town of Palm Beach

Dear Mr. Brazil,

Royal Park Homeowners' Association (RPHA) is, as you know, the civic group representing Town citizens, who are neighbors of Lakeside Park. RPHA appreciates your having invited us, via multiple meetings and phone conversations, to be directly involved from the onset in the planning to upgrade the Park pumping stations. We do thank you for your continuing to keep us current on all progress events.

At the scheduled September Town Council Meeting, you will be presenting three options (labeled -- "D", "E" and "F") for Council decision on this broad pumping station issue.

RPHA strongly supports proposed option "F". Considering the many facets of the situation, we believe "F" satisfies all requirements in the over all best interest of the Town.

Option "F" does assure a very reliable solution to pumping needs, while at the same time :

- 1) Expanding green space in the Lakeside Park, which is a prime goal of the Town's established long term Architectural Plan for the Park.
- 2) Removing the anomalous work shop operation, which disturbs the tranquility of the Park with its week-day noise and constant congestion. Such an operation is totally inconsistent with park use -- particularly in such a unique public open space lakeside in our Town.
- 3) Providing existing off-street parking space to accommodate marine service vehicles, thus eliminating diagonal parking along South Lake Drive by those oversized service trucks, which definitely disrupt traffic flow and present serious issues of public safety.

Option "F" is entirely compatible with the Town's existing Architectural Plan for the long-range development of the Park and South lake Drive.

All three Plan costs are unfortunately "expensive" ---- the cost of the "F" option is in line with the projected cost of the other two plans.

RPHA believes a balancing of cost, technical reliability, expansion of green space, compatibility with long term Park enhancement plans, compatibility with the Town's land-use policies and considerations of the intrinsic value of the Park itself, points to the selection of option "F" ----- We urge you to advocate the Council select option "F".

Respectfully,

Alan G. Eades --- for RPHA

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - Old Business

Agenda Title

Worth Avenue Project Update.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works
- Burkhardt Update

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Worth Avenue Project Update

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council review this project update as requested at the previous Town Council meeting and provide any additional direction deemed necessary.

GENERAL INFORMATION

Burkhardt Construction Inc. is the Construction Manager for the Worth Avenue Improvements project. Some highlights of ongoing and future work are noted in the attached summary. The project is on budget and on schedule for final completion by November 23, 2010. Upcoming milestones for key portions of the project are noted as follows:

- Re-opening of South County Road, and removal of detour is expected by September 17.
- Completion of all sidewalks is anticipated by October 11.
- Final surface of asphalt pavement is expected to be complete by October 15.
- The "Living Wall" will be erected by October 15.
- Completion of the clock tower is anticipated by November 1.
- The fountains at Hibiscus Avenue will be completed by November 1.

Representatives from the design consultant team (Bridges, Marsh & Associates and their subconsultants) and from Burkhardt Construction will be present at the meeting to answer any questions the Town Council may have.

HPB:nb

cc: Eric B. Brown, Assistant Director of Public Works/Operations
Michael Roach, Project Engineer

BURKHARDT

CONSTRUCTION INC.

Vincent G. Burkhardt
President



September 2, 2010

Agenda topics for Town Council Meeting on September 14, 2010:

- Job Specifics
 - The South 300 block curb and roadway has been constructed, the sidewalk and trees have recently been completed.
 - Hibiscus Ave. is on schedule. The tabby road and sidewalk construction has been completed. The fountain construction is currently underway. The stone work on the rectangular fountain is underway. The trees along Hibiscus have been planted.
 - The South 200 block curb and roadway has been constructed with sidewalk and trees to immediately follow in the early part of September.
 - The North 100 block curb and roadway has been constructed, the sidewalk and trees have recently been completed.
 - South County road from the North side of Peruvian Ave. to Hammon Ave. was closed on July 15, 2010. This portion of the road will remain closed for 60 days. A detour route along S. Ocean has been provided. A travel lane and parking lane remain open along Worth Ave. Milling of South County is scheduled for mid-September. A planned re-opening of South County for mid-September is on schedule.
 - The clock tower and living wall construction began as scheduled. The clock tower has been constructed. The stone work on the clock tower is underway. The foundation for the living wall has been completed. Both gas lamp piers have been constructed.
- Upcoming Milestones
 - Opening of South County September 17, 2010
 - Sidewalks completed by October 11, 2010
 - Final Asphalt surface completed by October 15, 2010
 - Living Wall erected by October 15, 2010
 - Clock Tower completed by November 1, 2010
 - Fountains completed by November 1, 2010
- Anticipated completion on schedule for November 23, 2010
- Consultant/Design Team acknowledgement
- Subcontractor acknowledgement
- On budget

BURKHARDT

CONSTRUCTION INC.

A few comments, questions and rumors out on the street:

- The curvature of the trees is intended and part of the design.
- Currently the street floods that is because of filter fabric over the inlets to prevent construction debris and sediment washing into the drainage system. Once the final lift of asphalt is in place the fabric will be removed.
- Parking stall width is the same as before. The valley gutter is part of the parking lane. (8')
- Schedule and completion of FPL overhead to underground conversion is contingent upon FPL/ATT/Comcast completing their work in a timely manner.

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - Old Business

Agenda Title

RESOLUTION NO. 100-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute an Interlocal Agreement with the City of West Palm Beach for a Subaqueous Force Main Project.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works
- Resolution No. 100-10
- Interlocal Agreement
- Exhibit A- FDOT UWA and Amendment 1
- Exhibit B- Overall Site Plan
- Exhibit C- Cost Estimate

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Interlocal Agreement with City of West Palm Beach for Subaqueous Force Main,
Accelerated Capital Improvement Program
Resolution No. 100-10

Date: September 2, 2010

STAFF RECOMMENDATION

Town staff recommends that Town Council approve Resolution No. 100-10, authorizing Mayor McDonald to execute the Interlocal Agreement between the City of West Palm Beach (City) and the Town of Palm Beach for construction of the Town's Subaqueous Sewage Force Main Crossing.

GENERAL INFORMATION

Town Council has previously amended the Accelerated Capital Improvement Program, adding a new Subaqueous Force Main Crossing from the Town's Bradley Park to the City of West Palm Beach's Providencia Park. This was done after it was realized that replacing the existing force main subaqueous crossing at Tangier Avenue would be impractical, and a new location would need to be found. With the City of West Palm Beach's plan to replace an existing water main with the reconstruction of the Flagler Memorial Bridge, it was determined that the best subaqueous route for the Town would be parallel to the City water main. The City has agreed to add the Town's sewage force main to their construction contract, which is anticipated to save the Town money as opposed to the Town constructing a new force main on its own at a later date.

The attached agreement has been reviewed by the Town Attorney and Town staff, and staff is recommending that Council approve same. Please note that the document may have minor edits as the City Administration makes a final review of the document. It is recommended, and contained in the attached resolution, that minor edits to subject agreement be allowed subject to the Town Manager and Town Attorney review and approval.

Upon execution of this agreement, the Town will need to send the City of West Palm Beach a check in the amount of \$1,751,300 to cover the estimated cost of the construction of this force main, which includes a 10% project contingency. The Town has hired Kimley Horn and Associates, Inc. (Kimley Horn), to provide the design services for this project, which is the same firm the City has selected.

If the Interlocal Agreement is approved by Town Council, Town staff is recommending the following construction budget:

<u>Construction w/contingency</u>	\$1,751,300
<u>Consultant Services including:</u>	\$ 40,600
Bidding	
Construction Phase	
As Builts	
Permit Certifications	
Closeout Engineering	
<u>Total Budget:</u>	\$1,791,900

FUNDING/FISCAL IMPACT

The estimated cost of this project is \$1,791,900. Funds for this project are contained within the Accelerated Capital Improvement Program projects fund. If the actual construction costs are less than the money forwarded to the City, the City will provide a refund to the Town. Conversely, if expenses exceed the \$1,751,300 estimate, Town staff will return to Council for additional funding.

TOWN ATTORNEY REVIEW

This agreement has been reviewed and approved by the Town Attorney as to form and legal sufficiency. Final review is still being completed by City legal staff. It is possible that minor changes in the agreement may be made prior to execution by both parties. Any such minor changes would be made upon the approval of the Town Attorney. If more significant or substantive changes are needed after the City completes its review, Town staff will bring this matter back to Town Council for future consideration.

HPB:mrs

cc: Eric B. Brown, Assistant Director of Public Works
Charles R. Langley, Senior Project Engineer
Douglas Terry, Water Resources Division Manager
City of West Palm Beach contacts
John C. Randolph, Town Attorney
Lynda Venne, Purchasing Agent

RESOLUTION NO. 100-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF WEST PALM BEACH FOR A SUBAQUEOUS FORCE MAIN PROJECT.

* * * * *

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

Section 1. The Town of Palm Beach and the City of West Palm Beach see a mutual benefit to enter into an interlocal agreement which will allow the Town and the City to combine a City watermain and Town force main project within the Town's and City's limits, in an attempt to reduce costs and provide the least amount of disruption to Town and City residents.

Section 2. The Town Mayor is hereby authorized and directed to execute the attached interlocal agreement between the Town of Palm Beach and the City of West Palm Beach.

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 interlocal agreement between the Town of Palm Beach and the City of West Palm Beach, including minor edits to the agreement subject to approval of the Town Attorney.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member²⁰⁶

**INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PALM BEACH AND
THE CITY OF WEST PALM BEACH FOR PROJECT FUNDING FOR THE
CONSTRUCTION OF THE TOWN'S SUBAQUEOUS FORCE MAIN**

THIS INTERLOCAL AGREEMENT ("Agreement") made and entered into this _____ day of _____, 2010 by and between the **TOWN OF PALM BEACH, FLORIDA** ("TOWN") and the **CITY OF WEST PALM BEACH, FLORIDA** ("CITY").

WITNESSETH:

WHEREAS, the Flagler Memorial Bridge, which extends from Olive Avenue in the City of West Palm Beach to Cocconut Row in the Town of Palm Beach is obsolete and is on a fast-track schedule for replacement by the Florida Department of Transportation ("FDOT Project"); and

WHEREAS, as a result of the FDOT Project, the CITY is required to relocate its existing 24-inch subaqueous water main, which is in conflict with the proposed bridge alignment ("CITY Project"); and

WHEREAS, the CITY and FDOT have entered into a Utility Work Agreement (FDOT Participating in Expense), dated July 13, 2009; and Amendment No. 1, dated April 15, 2010 (collectively "Utility Work Agreement") to establish construction schedule and provide for FDOT reimbursement of costs associated with the relocation of the City's water main. The Utility Work Agreement is attached hereto and incorporated herein as **Exhibit "A"**; and

WHEREAS, the CITY's Project extends from Providencia Park in West Palm Beach through Bradley Park in the Town of Palm Beach, in approximately the location shown in **Exhibit "B"** attached hereto; and

WHEREAS, the TOWN has identified a need for renewal and replacement of a portion of its force main transporting sewage from the TOWN to the CITY ("TOWN Project"); and said TOWN Project alignment is parallel to the CITY's Project, as depicted on **Exhibit "B"**; and

WHEREAS, the TOWN and CITY desire to jointly participate in the construction of the TOWN's Project and the CITY's Project (collectively "Projects") in order to make the best use of their resources, reduce costs in mobilization, demobilization, materials, and other benefits associated with joint projects; and

WHEREAS, the TOWN and CITY desire to enter into this Agreement to construct both Projects using a Contractor competitively selected by the CITY, with the CITY directly managing both Projects, with review and oversight of the TOWN's Project by the TOWN; and

WHEREAS, Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act of 1969” authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, this Agreement will provide for the duties and responsibilities of the parties with respect to design, procurement, permitting, construction, funding and other matters relating to the construction of the Projects;

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

1. The above recitations are true and correct.
2. The TOWN and CITY hereby set forth the duties and responsibilities of the parties with respect to the relocation of the CITY’s existing water main and the replacement of the TOWN’s force main, both extending from Providencia Park in the City of West Palm Beach through Bradley Park in the Town of Palm Beach, as shown in **Exhibit “B”**.
3. Each party shall be responsible for all costs attributable to the construction of its own Project, including all associated engineering observations, inspections, certification, materials, labor and change orders, if applicable. The TOWN estimates the cost for the construction of its Project to be **One Million Seven Hundred Fifty One Thousand Three Hundred and 00/100 Dollars (\$1,751,300.00)**, including a ten percent (10%) contingency as shown in **Exhibit “C”**, attached hereto.
4. Both parties shall grant to each other all the necessary utility easements needed for the construction, operation, and maintenance of the respective Projects and associated facilities.
5. Within ten (10) business days from the effective date of this Agreement, the TOWN shall remit to the CITY, the sum of \$1,751,300.00, for the costs associated with the construction of the TOWN’s Project. This amount may be adjusted in case of any approved change orders pursuant to this Agreement. The CITY shall place said money into an interest-bearing account within the TOWN’s existing Renewal and Replacement Fund. All accrued interests shall be credited to the TOWN within the interest bearing account. Periodic cash transfers to the Equity pooled cash account within the TOWN’s Renewal and Replacement Fund will be made from the interest bearing account to provide funds for disbursement for the TOWN’s Project costs and expenses. The parties agree that an administrative fee of \$500.00, per month to cover CITY’s expenses in administering this Agreement, processing project payments and accounting shall be charged by the CITY to the project and the Equity in pooled cash

- account within the TOWN's Renewal and Replacement Fund, from the effective date of this Agreement. The total administrative fee to be charged by the CITY under this Agreement shall not exceed \$5,000.00. After the completion of the TOWN's Project, any monies remaining in the account shall be refunded to the TOWN within a reasonable time period. If the estimated costs of \$1,751,300.00, including interest thereon, are insufficient to cover the actual costs of the TOWN's Project, the CITY shall notify the TOWN in writing of any shortfall. The TOWN shall pay such shortfall immediately upon notification by the City. The City will report to the TOWN semi-annually the amount of interest the TOWN has earned on the amount deposited into the interest-bearing account in the TOWN's Renewal and Replacement Fund for the TOWN's Project.
6. The CITY shall select a Contractor to perform the Projects by competitive bidding process, in accordance with its Procurement procedures.
 7. The TOWN is responsible for the design of its Project, which will be incorporated into the CITY's contract with the Contractor. The CITY's Contractor shall provide materials and construct the TOWN's Project, in accordance with contract requirements and the TOWN's plans and specifications.
 8. The CITY's Contractor will furnish all testing, field survey control and related work for the TOWN's Project. The CITY will provide to the TOWN progress reports as necessary and will invite the TOWN's representative to all progress meetings relating to the TOWN's Project, including constructability meeting, final utility coordination meeting and preconstruction meeting.
 9. The CITY will be responsible for contract administration. The TOWN will conduct its own construction inspection. The TOWN, or its designee, shall perform all observations necessary to certify its Project and shall provide all necessary forms as well as as-built documentation for submittal to the Palm Beach County Health Department for clearance for future use of the TOWN's force main as needed.
 10. As a condition to this Agreement, the TOWN shall have the right to review and approve any change order between the CITY and the Contractor, as it relates to the TOWN's Project. The TOWN's approval may not be unreasonably withheld. Any delay costs associated with the Town's failure to timely approve change order requests shall be the responsibility of the Town.

11. Any change order pertaining to the TOWN's Project must be approved in writing by the TOWN in advance of the commencement of the work. No substitutions of materials are permitted without TOWN's prior written approval.
12. Upon completion and acceptance of the Project, the TOWN shall own, control and maintain the force main and any related work constructed under this Agreement.
13. The CITY's Contractor shall prepare a complete set of as-built information and record drawings for the TOWN's Project, in accordance with the TOWN's latest requirements.
14. Upon completion of the TOWN's Project and acceptance in writing by the TOWN, the CITY shall, within a reasonable time period, furnish the TOWN with a final and complete accounting of all costs incurred in connection with the TOWN's Project. All costs, records and accounts for the TOWN's Project are subject to audit by the TOWN.
15. The parties acknowledge that the costs for the construction of CITY's Project are reimbursable by the FDOT, pursuant to the terms and conditions of the Utility Work Agreement between the CITY and FDOT. In the event of a conflict between any provision of the Utility Work Agreement and any provision of this Agreement, the Utility Work Agreement shall govern and prevail.
16. All the provisions of this Agreement calling for the expenditure of ad valorem tax money by either the TOWN or the CITY, to the time actual construction of the Projects begin, are subject to annual budgetary funding and should either side involuntarily fail to fund any of their respective obligations pursuant to this Agreement, this Agreement may be terminated. Once construction of the Projects commence, performance under this Agreement shall no longer be contingent upon availability of funds for the same. Further, once the CITY commences construction of the Projects, the Projects shall be prosecuted to completion, unless the TOWN notifies the CITY in writing that further work on the TOWN's Project shall cease. In that event, the TOWN shall be responsible for all costs incurred by the CITY relating to the TOWN'S Project.
17. If either party fails to fulfill its obligations under this Agreement in a timely and proper manner the other party shall have the right to terminate this Agreement by giving a written notice of deficiency. The party in default shall then have thirty (30) calendar days from receipt of the notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time period, the non-defaulting party shall have the option to terminate this Agreement immediately.

18. Each party shall be liable for its own actions and negligence and, subject to the limitations of Florida Statute 768.28, the CITY shall indemnify, defend and hold harmless the TOWN against any actions, claims or damages arising out of the CITY's negligence in connection with this Agreement, and the TOWN, subject to the limitations of Florida Statute 768.28, shall indemnify, defend and hold harmless the CITY against any actions, claims or damages arising out of the TOWN's negligence in connection with this Agreement. Nothing in this paragraph shall be interpreted as a waiver of the TOWN's or the CITY's sovereign immunity. The CITY shall ensure that the Contractor hired to perform the work described in this Agreement will indemnify, defend, and hold harmless the TOWN against any actions, claims or damages arising out of the Contractor's negligence and shall name the TOWN as an additional insured on any certificates of insurance provided to the CITY in connection with the TOWN's Project.
19. The CITY agrees that the TOWN shall be a third party beneficiary of all required performance bonds and/or guaranties obtained by the CITY in connection with the TOWN's Project.
20. All notices required to be given under this Agreement shall be deemed sufficient to each party when delivered by United States mail to the following:

CITY: City Administrator
 City of West Palm Beach
 401 Clematis Street, 2nd Floor
 West Palm Beach, Florida 33401

With copy to: City Attorney
 City of West Palm Beach
 401 Clematis Street, 5th Floor
 West Palm Beach, Florida 33401

TOWN: Director of Public Works
 Town of Palm Beach
 P.O. Box 2029
 Palm Beach, Florida 33480

With copy to: Town Manager
 Town of Palm Beach
 P.O. Box 2029
 Palm Beach, Florida 33480

21. Any litigation arising from or relating to this Agreement shall be governed by the laws of the State of Florida and venue in any such proceeding shall be exclusively in Palm Beach County, Florida.
22. Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms or conditions of this Agreement shall be borne by the respective parties.
23. No additions, alterations, or variations from the terms of this Agreement shall be valid, nor can the provisions of this Agreement be waived by either party, unless such addition, alteration, variation or waiver is expressed in writing and signed by the parties hereto.
24. Failure(s) to insist on the strict performance of any covenant, condition or provision of this Agreement by a party, its successors and assigns, shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
25. In the event that any section, paragraph, sentence, clause or provision of this Agreement is held to be invalid by a court of competent jurisdiction, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
26. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations or agreement, either written or oral, with respect to matters contained herein.
27. This Agreement shall become effective upon its execution by the TOWN and the CITY.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement
the date and year first above written.

TOWN OF PALM BEACH, FLORIDA

CITY OF WEST PALM BEACH, FLORIDA

By: _____
Jack McDonald, Mayor

By: _____
Lois J. Frankel, Mayor

Date: _____ 2010

Date: _____ 2010

ATTEST:

ATTEST:

TOWN CLERK: Joanna Cunningham

CITY CLERK: Blane Kauthen

Approved as to Form and Legal Sufficiency:

John C. Randolph
Attorney for the Town of Palm Beach

Attorney for the City of West Palm Beach

RECOMMEND APPROVAL:

H. Paul Brazil, P.E. Date
Director of Public Works

Res 207-09

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
 (FDOT PARTICIPATING IN EXPENSE)

Form No. 710-010-54
 Utilities
 10/04

Financial Project ID: 412489-2-56-01	Federal Project ID:
County: Palm Beach	State Road No.: A1A
District Document No:	
Utility Agency/Owner (UAO): City of West Palm Beach	

THIS AGREEMENT, entered into this 21st day of July, year of 2009, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "FDOT," and **City of West Palm Beach**, hereinafter referred to as the "UAO";

WITNESSETH:

WHEREAS, the UAO owns or desires to install certain utility facilities which are located on the public road or publicly owned rail corridor identified below, hereinafter referred to as the "Facilities," (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

WHEREAS, the FDOT, is currently engaging in a project which involves constructing, reconstructing, or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor identified as Flagler Memorial, State Road No. A1A, hereinafter referred to as the "Project"; and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, installation, adjustment, or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

WHEREAS, the UAO, in accordance with and subject to the limitations of the terms and conditions of this Agreement, is entitled to be reimbursed for some portion or all of the Utility Work; and

WHEREAS, the FDOT and the UAO desire to enter into an agreement which establishes the terms and conditions applicable to the Utility Work;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the FDOT and the UAO hereby agree as follows:

1. **Performance of Utility Work**

- a. The UAO shall perform the Utility Work in accordance with the utility relocation schedule attached hereto as Exhibit A and by this reference made a part hereof (the "Schedule"), the plans and specifications for the Utility Work which have been previously approved by the FDOT (the "plans"), said Plans being incorporated herein and made a part hereof by this reference, and the detailed cost breakdown for the Utility Work (the "estimate") previously prepared. If the Schedule, the Plans, and the Estimate have not been prepared as of the date of the execution of this Agreement, then the Utility Work shall be performed in accordance with the Plans, the Schedule, and the Estimate that are hereafter prepared in compliance with the notice previously sent to the UAO which established the terms and conditions under which those documents are to be prepared. The FDOT's approval of the Plans shall not be deemed to be an adoption of the Plans by the FDOT nor a substitution for the proper exercise of engineering judgment and the UAO shall at all times remain responsible for any errors or omissions in the Plans. The Utility Work shall include all Facilities located on the Project and neither the failure of the UAO to include all of the Facilities in the Schedule nor the Plans nor the failure of the FDOT to identify this omission during its review of the Plans shall relieve the UAO of the obligation to make those Facilities part of the Utility Work. Time shall be of the essence in complying with the total time shown by the Schedule for the Utility Work as well as any and all interim time frames specified therein. The Utility Work shall be performed in a manner and using such methods so as to not cause a delay to the FDOT or its contractors in the prosecution of the Project. The UAO shall be responsible for all costs incurred as a result of any delay to the FDOT or its contractors caused by errors or omissions in the Plans, Schedule, or Estimate (including location of the Facilities and the proper inclusion of all

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

Form No. 710-010-54
Utilities
10/04

Facilities as part of the Utility Work as stated above); failure to perform the Utility Work in accordance with the Plans and Schedule; or failure of the **UAO** to comply with any other obligation under this Agreement or under the law.

- b. All Utility Work shall be performed by the **UAO's** own forces or its contractor. The **UAO** shall be responsible for obtaining any and all permits that may be necessary to perform the Utility Work. The **FDOT's** Engineer (as that term is defined by the **FDOT's** Standard Specifications for Road and Bridge Construction) has full authority over the Project and the **UAO** shall be responsible for coordinating and cooperating with the **FDOT's** Engineer. In so doing, the **UAO** shall make such adjustments and changes in the Plans and Schedule as the **FDOT's** engineer shall determine are necessary for the prosecution of the Project and shall stop work or modify work upon order of the **FDOT's** engineer as determined by the **FDOT's** engineer to be necessary for public health, safety or welfare. The **UAO** shall not be responsible for the cost of delays caused by such adjustments or changes unless they are attributable to the **UAO** pursuant to Subparagraph 1 a.
- c. After the **FDOT** has received a proper Schedule, Estimate and Plans, the **FDOT** will issue a notice to the **UAO** which authorizes the Utility Work to proceed. The **UAO** shall notify the appropriate **FDOT** office in writing prior to beginning the Utility Work and when the **UAO** stops, resumes, or completes the Utility Work. The Utility Work shall be performed under the conditions of, and upon completion of the Utility Work, the Facilities shall be deemed to be located on the public road or publicly owned rail corridor under and pursuant to, the Utility Permit _____. (Note: Intent of this line is to allow either attachment of or separate reference to the permit).

2. Claims Against UAO

- a. In the event the **FDOT's** contractor provides a notice of intent to make a claim against the **FDOT** relating to the Utility Work, the **FDOT** will, in accordance with the **FDOT's** procedure, notify the **UAO** of the notice of intent and the **UAO** will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- b. In the event the **FDOT's** contractor makes any claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the claim and the **UAO** will cooperate with the **FDOT** in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the **UAO** and the **FDOT's** contractor shall be in writing, shall be subject to written **FDOT** concurrence and shall specify the extent to which it resolves the claim against the **FDOT**.
- c. The **FDOT** may withhold reimbursement to the **UAO** until final resolution (including any actual payment required) of all claims relating to the Utility Work. The right to withhold shall be limited to actual claim payments made by **FDOT** to **FDOT's** contractor.

3. Reimbursement for Utility Work

- a. The **FDOT** agrees to reimburse the **UAO** for a portion of the cost of the Utility Work, hereinafter referred to as the "**FDOT** Participating Amount." The **FDOT** Participating Amount is established by the **FDOT's** Utility Estimate Summary form or similar form submitted to and accepted by the **FDOT** and the forms supporting documentation. The **FDOT** Participating Amount is estimated to be \$438,200. Any costs not included in the approved Plans and Estimate and any location work (vertically or horizontally) or other engineering work performed to determine the compensability of the Utility Work shall not be reimbursed by the **FDOT**. The **UAO** shall obtain written approval from the **FDOT** prior to performing Utility Work which exceeds the Estimate or which is not in the Plans.
- b. The method to be used in calculating the cost of the Utility Work shall be one of the following (check which option applies):

☒ Actual and related indirect costs accumulated in accordance with a work order accounting

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procedure prescribed by the applicable Federal or State regulatory body.

- ☐ Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the **UAO** and approved by the **FDOT's**. (If this option is selected, the **UAO** shall provide written evidence of such approval).
 - ☐ An agreed lump sum as supported by a detailed analysis of estimated costs prepared prior to the execution of this Agreement.
- c. In determining the amount of the cost of the Utility Work to be reimbursed, a credit will be required for any increase in the value of the new Facility and for any salvage derived from the old Facility. These credits shall be determined as follows:
- (1) Increase in value credit.
 - (a) Expired Service Life. If an entirely new Facility is constructed and the old Facility retired, credit for the normally-expected service life of the old Facility applies, and will be determined as of the time of the issuance of the work order. This credit shall be deducted proportionally from each invoice for the Utility Work.
 - (b) Upgrading. A percentage of the total cost of the Utility Work, based on the extent of the betterment obtained from the new Facilities, to be determined as of the time of the issuance of the work order, will be applied equally to each billing for the Utility Work.
 - (2) Salvage Value. The **FDOT** shall receive salvage value credit for any salvage which shall accrue to the **UAO** as a result of the above Utility Work. It is the **UAO's** responsibility to ensure recovery of salvageable materials and to report the salvage value of same to the **FDOT**. This Salvage Value credit shall be applied as provided in Paragraph 4 c.

4. Invoice Procedures for FDOT Participating Amount

The following terms and conditions apply to all invoices submitted pursuant to this Agreement for reimbursement of the **FDOT** Participating Amount:

- a. The **UAO** may, unless reimbursement is on a lump-sum basis pursuant to Subparagraph 3. b. hereof, at monthly intervals, submit progress invoices for all costs incurred for the period covered by the invoice. In addition to deductions for applicable credits, which deductions shall be shown on the invoice, the **FDOT** will retain ten (10%) percent of such progress invoices. Retainage will be paid with the final invoice. If reimbursement is on a lump sum basis pursuant to Subparagraph 3.b. hereof, the lump sum invoice shall be submitted as a final invoice pursuant to Subparagraph 4.b. below.
- b. The **UAO** shall submit a final invoice to the **FDOT** for payment of all Utility Work within one hundred and eighty (180) days after written notification from the **FDOT** of final acceptance of the Utility Work. The **UAO** waives all right of reimbursement for invoices submitted more than one hundred eighty (180) days after written notification of final acceptance of the Utility Work. The **FDOT** does not waive its right to reject future untimely invoices by acceptance and payment of any invoices not submitted within one hundred eighty (180) days after written notification of final acceptance of the Utility Work.

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- c. All invoices shall be arranged in the order of items contained in the Estimate referred to in Paragraph 1. The totals for labor, overhead, travel expenses, transportation, equipment, materials and supplies, handling costs and all other services shall be shown in such a manner as will allow ready comparison with the approved Plan and Estimate. Materials shall be itemized where they represent major components. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in relative position with the charge for the replacement or the original charge for temporary use.
- d. All invoices shall be submitted in triplicate and shall show the description and site of the project and the location where the records and accounts invoiced can be audited. Adequate reference shall be made in the invoicing to the **UAO's** records, accounts, and other relevant documents.
- e. All cost records and accounts shall be maintained in the auditable condition for a period of eight hundred twenty (820) days after final payment is received by the **UAO** and shall be subject to audit by a representative of the **FDOT** at any reasonable time during this eight hundred twenty (820) day period.
- f. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Such detail shall include, but not be limited to, a separation of costs for work performed by **UAO's** employees and work performed by **UAO's** contractor.
- g. Invoices for any travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. A state agency may establish rates lower than the maximum provided in Section 112.061, Florida Statutes.
- h. Upon receipt of an invoice, the **FDOT** has thirty (30) days to inspect and approve the goods and services. The **FDOT** has twenty (20) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved to deliver a request for payment (voucher) to the Department of Financial Services or to return the invoice to the **UAO**.
- i. If a warrant in payment of an invoice is not issued within forty (40) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty, as established pursuant to Section 215.422, Florida Statutes, will be due and payable in addition to the invoice amount, to the **UAO**. Interest penalties of less than one (1) dollar will not be enforced unless the **UAO** requests payment. Invoices which have to be returned to the **UAO** because of **UAO's** preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **FDOT**. In the event of a bona fide dispute, the **FDOT's** voucher shall contain a statement of the dispute and authorize payment only of the undisputed amount.
- j. In accordance with Section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the legislature.
- k. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.
- l. In accordance with the Florida Statutes, the **FDOT**, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The **FDOT** shall require a statement from the comptroller of the **FDOT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this Paragraph shall be incorporated verbatim in all contracts of the **FDOT**

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which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.

- m. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- n. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

5. Out of Service Facilities

No Facilities shall be left in place on **FDOT's** Right of Way after the Facilities are no longer active (hereinafter "Placed out of service/Deactivated") unless specifically identified as such in the Plans. The following terms and conditions shall apply to Facilities Placed out of service/Deactivated, but only to said Facilities Placed out of service/Deactivated:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for Facilities Placed out of service/Deactivated.
- b. The **FDOT** agrees to allow the **UAO** to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by **UAO**. In the event of a breach of this Agreement by **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph 5. e. below.
- c. The **UAO** shall take such steps to secure the Facilities and otherwise make the Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the **UAO** to use due care in its dealings with others. The **UAO** shall be solely responsible for gathering all information necessary to meet these obligations.
- d. The **UAO** shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests concerning the Facilities that are Placed out of service/Deactivated of the **FDOT** or other permittees using or seeking use of the right of way.
- e. The **UAO** shall remove the Facilities upon 30 days prior written request of the **FDOT** in the event that the **FDOT** determines that removal is necessary for **FDOT** use of the right of way or in the event that the **FDOT** determines that use of the right of way is needed for other active utilities that cannot be otherwise accommodated in the right of way. In the event that the Facilities that are Placed out of Service/Deactivated would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto. In the event that the Facilities that are Placed out of service/Deactivated would have qualified for reimbursement only under Section 337.403 (1)(a), Florida Statutes, removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto because such a removal

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would be considered to be a separate future relocation not necessitated by the construction of the project pursuant to which they were Placed out of service/Deactivated, and would therefore not be eligible and approved for reimbursement by the Federal Government. In the event that the Facilities that are Placed out of service/Deactivated would have qualified for reimbursement for other reasons, removal of the out of service Facilities shall be reimbursed by the **FDOT** as though the Facilities had not been Placed out of service/Deactivated. Removal shall be completed within the time specified in the **FDOT's** notice to remove. In the event that the **UAO** fails to perform the removal properly within the specified time, the **FDOT** may proceed to perform the removal at the **UAO's** expense pursuant to the provisions of Sections 337.403 and 337.404, Florida Statutes.

- f. Except as otherwise provided in Subparagraph e. above, the **UAO** agrees that the Facilities shall forever remain the legal and financial responsibility of the **UAO**. The **UAO** shall reimburse the **FDOT** for any and all costs of any nature whatsoever resulting from the presence of the Facilities within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Facilities or from the presence of any hazardous substance or material in the Facilities or the discharge of hazardous substances or materials from the Facilities. Nothing in this Paragraph shall be interpreted to require the **UAO** to indemnify the **FDOT** for the **FDOT's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **UAO**.

6. Default

- a. In the event that the **UAO** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from **FDOT**.
 - (2) Pursue a claim for damages suffered by the **FDOT**.
 - (3) If the Utility Work is reimbursable under this Agreement, withhold reimbursement payments until the breach is cured. The right to withhold shall be limited to actual claim payments made by **FDOT** to third parties.
 - (4) If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the **FDOT** or the public against payments due under this Agreement for the same Project. The right to offset shall be limited to actual claim payments made by **FDOT** to third parties.
 - (5) Suspend the issuance of further permits to the **UAO** for the placement of Facilities on **FDOT** property if the breach is material and has not been cured within 60 days from written notice thereof from the **FDOT** until such time as the breach is cured.
 - (6) Pursue any other remedies legally available.
 - (7) Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3), Florida Statutes.
- b. In the event that the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **UAO**.

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- (2) If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.
- (3) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties and from any statutory obligations that either party may have with regard to the subject matter hereof.

7. Indemnification

FOR GOVERNMENT-OWNED UTILITIES:

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT-OWNED UTILITIES:

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

8. Force Majeure

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Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

9. Miscellaneous

- a. If the Utility Work is reimbursable under this Agreement, the **UAO** shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto in connection with the Utility Work covered by this agreement, and such compliance will be governed by the method marked below:
- ☒ The **UAO** will perform all or part of such Utility Work by a contractor paid under a contract let by the **UAO**, and the Appendix "A" of Assurances transmitted with the issued work order will be included in said contract let by the **UAO**.
 - ☐ The **UAO** will perform all of its Utility Work entirely with **UAO's** forces, and Appendix "A" of Assurances is not required.
 - ☐ The Utility Work involved is agreed to by way of just compensation for the taking of the **UAO's** facilities on right-of-way in which the **UAO** holds a compensable interest, and Appendix "A" of Assurances is not required.
 - ☐ The **UAO** will perform all such Utility Work entirely by continuing contract, which contract to perform all future Utility Work was executed with the **UAO's** contractor prior to August 3, 1965, and Appendix "A" of Assurances is not required.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the then current Utility Accommodation Manual and the current utility permit for the Facilities.
- c. Pursuant to Section 287.058, Florida Statutes, the **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.
- d. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written policies and procedures which shall be applicable at the time of the Project and the relocation of the Facilities and except that the **UAO** and the **FDOT** may have entered into joint agreements for Utility Work to be performed by **FDOT's** highway contractor. To the extent that such a joint agreement exists, this Agreement shall not apply to Facilities covered by the joint agreement. Copies of **FDOT** manuals, policies, and procedures will be provided to the **UAO** upon request.
- e. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- f. Time is of the essence in the performance of all obligations under this Agreement.
- g. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of

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five business days from the proper sending thereof unless proof of prior actual receipt is provided. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the **UAO**:
Director of Engineering Services, City of West Palm Beach

1000 45th Street
West Palm Beach, Florida 33407

If to the **FDOT**:
Operations Engineer
7900 Forest Hill Blvd.
West Palm Beach, Florida 33413-3342

10. **Certification**

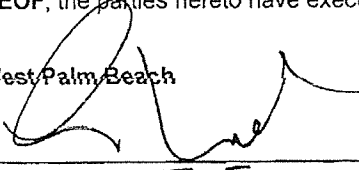
This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled "Changes To Form Document."

You **MUST** signify by selecting or checking which of the following applies:

- ☐ No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- ☒ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

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

UTILITY: City of West Palm Beach

BY: (Signature) 

(Typed Name: LOIS J. Frankel, Mayor)

(Typed Title: Mayor)

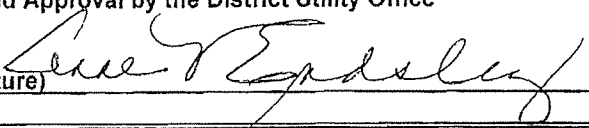
DATE: 7/13/2009

CITY ATTORNEY'S OFFICE
Approved as to form
and legal sufficiency

By: 

Date: 7-1-09

Recommend Approval by the District Utility Office

BY: (Signature) 

DATE: 7/17/2009

FDOT Legal review

BY: (Signature) 

DATE: 7/20/2009

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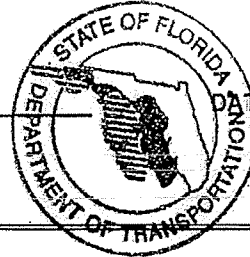
District Counsel

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature) _____

(Typed Name: James A. Wolfe, P.E.)

(Typed Title: District Secretary)



DATE: 9/21/04

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

APPENDIX
Changes to form Document

In accordance with section # 10 in the basic agreement the following sections shall be modified;

The fourth Whereas paragraph shall be deleted and the following substituted:

WHEREAS, the UAO, in accordance with and subject to the limitations of the terms and conditions of this Agreement is entitled to be reimbursed for the Utility Work described herein; and

Section # 1 a. shall be deleted and the following substituted:

Section # 1a.

The initial compensation shall be for:

- Hydraulic Modeling
- Data Collection / Water Main Alignment
- Field Survey/ Environmental / Geotechnical / Utility Data Collection
- Conceptual Design
- Permitting
- Final Design / Construction Documents

for the City's relocation of an existing 24 inch Water Main which crosses the ICWW on the south side of Flagler Memorial Bridge. The Florida Department of Transportation requires that the City's construction cost estimate and proposed location be provided within eight (8) weeks of the execution of this agreement and that the City's proposed location for the replacement facility shall be reviewed by the Department to assure that no obvious construction conflicts are created by this route. It is anticipated that once the Department has had the opportunity to review the location and proposed cost for reasonableness and to assure "no betterment" this agreement will have a Change Order/Modification or Supplemental Agreement entered into to allow for the additional cost to cover the reimbursement for the eligible costs for relocation of the water facility including design and construction.

The UAO shall prepare a scope of services for the utility design work including

- Cost including staff hours and rates,
- Relocation schedule for design and construction, the relocation schedule shall include the dates indicated in the new section 11 below.

The scope shall include final engineering design, plans preparation, permitting and other necessary related design documents and cost estimate for the actual utility relocation work (hereinafter referred to as the "Plans Package").

Additionally the FDOT and the UAO shall enter into a supplemental agreement for the construction of the work.

Utility Work Agreement (FDOT participating in Expense)

Section # 1 b. shall be deleted and the following substituted:

Section # 1b.

After the design and study is complete, the FDOT and the UAO shall sign a supplemental agreement for the construction work for the agreed to estimated amount of construction. No construction work shall begin until said supplemental agreement is executed.

Section # 1 c. shall be deleted and the following substituted:

Section # 1c.

After the FDOT has received a proper Schedule, Estimate and Plans, the FDOT will issue a notice to the UAO which authorizes the Utility Work to proceed.

The UAO shall perform the Utility Work in accordance with the deadlines indicated below.
The first sentence of Section # 3 a. shall be deleted and the following substituted:

Section # 3a.

The FDOT agrees to reimburse the UAO for the Utility Work described herein, hereinafter referred to as the "FDOT Participating Amount."

Section # 3 c.: The following shall be added:

The UAO shall determine salvage value and the FDOT shall review. Costs associated with placing the Utility out of service will be addressed in the supplemental agreement to add the construction work. No construction work shall begin until said supplemental agreement is executed.

Section # 5 Out of Service Facilities

This section is hereby deleted and the construction supplement will address this issue.

Section # 7 FOR GOVERNMENT –OWNED UTILITIES: Both paragraphs shall be deleted and the following shall be substituted:

With respect to any of the UAO's consultants, sub-consultants, contractors, and/or sub-contractors, such party in any contract for this project shall agree to indemnify, defend, save and hold harmless the FDOT from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such consultants, subconsultants, contractors and/or subcontractors. The UAO shall provide to the FDOT written evidence of the foregoing upon the request of the FDOT. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the FDOT for its own negligence.

In the event that UAO contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:

- (a) UAO's contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense,

Utility Work Agreement (FDOT participating in Expense)

Comprehensive General Liability with minimum limits of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Worker's Compensation insurance with minimum limits of \$500,000.00 per Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability and Worker's Compensation policy without restrictive endorsements, as filed by the Insurance Services Office and shall name the FDOT as an additional insured.

- (b) UAO's contractor shall furnish UAO with Certificates of Insurance of Endorsements evidencing the insurance coverages specified herein prior to the beginning performance of work under this Agreement.
- (c) Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of UAO's contractor is completed. All policies must be endorsed to provide the FDOT with at least thirty (30) days notice of cancellation and or/or restriction. If any of the insurance coverages will expire prior to the completion of work, copies of renewal policies shall be furnished at least (30) days prior to the date of expiration.
- (d) If the UAO's consultants, sub-consultants, contractors, and/or sub-contractors, does not have the financial ability to pay the full damages incurred, the UAO shall not be responsible for any excess owed the UAO's consultants, sub-consultants, contractors, and/or sub-contractors,

The Indemnification paragraph provided for Non-Government owned utilities is not applicable and is hereby removed.

Section # 9 g.: The following shall be added after the UAO address:

And a copy to:
City Administration
P.O. Box 3366
West Palm Beach, FL 33402

New Section # 11 shall be added to the above referenced agreement:

11. Utility Schedule

<u>Activity</u>	<u>Deadline</u>
Conceptual Design	December, 2009
Final Design and Construction Documents	November, 2010
Construction Completion Date	July, 2011

The Parties acknowledge that there are permits required for this project. The FDOT where it is able and appropriate will endeavor to assist the UAO with permit issues.

Res 126-10

06720.001

Financial Project ID: 412489-2-56-01	Federal Project ID: 6425-014-U
County: Palm Beach	State Road No.: A1A
District Document No.: APD29	
Utility Agency/ Owner (UAO): City of West Palm Beach	

AMENDMENT NUMBER ONE TO
UTILITY WORK AGREEMENT (FDOT Participating in Expense)

THIS AMENDMENT TO THE Utility Work Agreement ("Agreement") is made and entered into on this 15th day of April, 2010 by and among the City of West Palm Beach, a Florida municipal corporation ("UAO") located in Palm Beach County Florida, and the Florida Department of Transportation ("Department"), (collectively "Parties").

WHEREAS, the parties entered into a Utility Work Agreement (FDOT Participating in Expense) on or about July 21, 2009 (hereinafter "Agreement") wherein the Department agreed to reimburse the UAO for certain Utility work including the following as further specified in that Agreement:

- Hydraulic Modeling
- Data Collection / Water Main Alignment
- Field Survey/ Environmental / Geotechnical / Utility Data Collection
- Conceptual Design
- Permitting
- Final Design / Construction Documents

for the UAO's relocation of an existing 24 inch Water Main which crosses the ICWW on the south side of Flagler Memorial Bridge.

WHEREAS, the parties wish to modify the Agreement entered into on or about July 21, 2009 to add the construction funds for the relocation of the above referenced Water Main as anticipated by that Agreement; and

NOW THEREFORE, the Department and UAO agree as follows:

1. The UAO, in accordance with and subject to the limitations of the terms and conditions of the Agreement and the Amendments or supplements thereto is entitled to be reimbursed for the Utility Work described herein.
2. **Section # 1a. of the original Agreement shall be reinstated as to the construction work intended to be performed via this Amendment.** Attached to this Amendment is Exhibit A which is the Utility Work Schedule. In any case the Utility Work under this Agreement shall be completed no later than July 31, 2011.
3. **Section # 1b. of the original Agreement shall be reinstated as to the construction work to be performed via this Agreement.**
4. **Section # 1c. of the original Agreement shall be reinstated as to the construction work to be performed via this Agreement**

5. The first sentence of Section # 3 a. shall be deleted and the following substituted:

The additional FDOT participating amount for the construction is estimated to be \$2,954,800.00, hereinafter referred to as the "FDOT Participating Amount for this Amendment #1." The total amount of the original agreement and this Amendment is \$3,392,200.00. The construction estimate may be increased by Amendment.

6. Section # 3 c. shall remain as stated in the Appendix to the Original Agreement.

7. Section # 5 Out of Service Facilities: This section is hereby reinstated for the construction except that the water main shall remain in place, but be placed out of service and grouted.

8. Section # 7 FOR GOVERNMENT-OWNED UTILITIES: Both paragraphs shall be deleted and the following shall be substituted:

With respect to any of the UAO's consultants, sub-consultants, contractors, and/or sub-contractors, such party in any contract for this project shall agree to indemnify, defend, save and hold harmless the FDOT from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such consultants, subconsultants, contractors and/or subcontractors. The UAO shall provide to the FDOT written evidence of the foregoing upon the request of the FDOT. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the FDOT for its own negligence.

In the event that UAO contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:

- (a) UAO's contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, Comprehensive General Liability with minimum limits of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Worker's Compensation insurance with minimum limits of \$500,000.00 per Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability and Worker's Compensation policy without restrictive endorsements, as filed by the Insurance Services Office and shall name the FDOT as an additional insured.
- (b) UAO's contractor shall furnish UAO with Certificates of Insurance of Endorsements evidencing the insurance coverages specified herein prior to the beginning performance of work under this Agreement.
- (c) Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of UAO's contractor is completed. All policies must be endorsed to provide the FDOT with at least thirty (30) days notice of cancellation and or/or restriction. If any of the insurance coverages will expire prior to the completion of work, copies of renewal policies shall be furnished at least (30) days prior to the date of expiration.
- (d) If the UAO's consultants, sub-consultants, contractors, and/or sub-contractors, does not have the financial ability to pay the full damages incurred, the UAO shall not be responsible for any excess owed the UAO's consultants, sub-consultants, contractors, and/or sub-contractors,

The Indemnification paragraph provided for Non-Government owned utilities is not applicable and is hereby removed.

9. Section # 9 g.: The following shall be added after the UAO address:

And a copy to:

City Administration

P.O. Box 3366

West Palm Beach, FL 33402

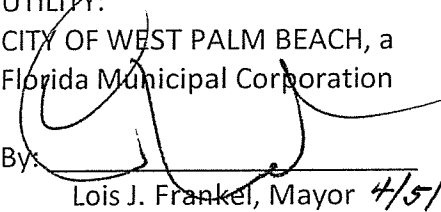
10. Utility Schedule

<u>Activity</u>	<u>Deadline</u>
Final Design and Construction Documents	November, 2010
Construction Completion Date	July 31 st , 2011.

The parties acknowledge that there are permits required for this project. The FDOT where it is able and appropriate will endeavor to assist the UAO with permit issues

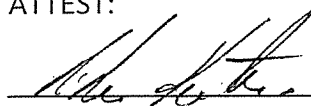
UTILITY:

CITY OF WEST PALM BEACH, a
Florida Municipal Corporation

By: 

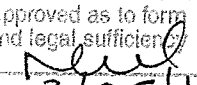
Lois J. Frankel, Mayor 4/5/10

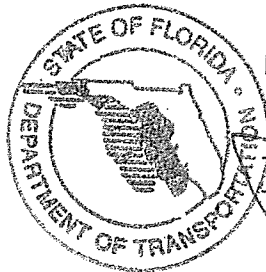
ATTEST:


City Clerk

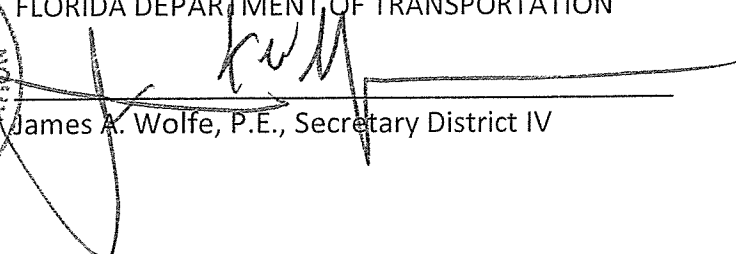
CITY ATTORNEY'S OFFICE

Approved as to form
and legal sufficiency

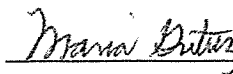
By: 
Date: 3/25/10



FLORIDA DEPARTMENT OF TRANSPORTATION


James A. Wolfe, P.E., Secretary District IV

WITNESSES:


Witness

Print Name: Maria Buttz

Recommended Approval by District Utility Office

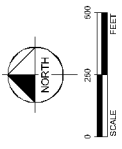
By: (signature) 

FDOT Legal Review

By: (signature) 

Utility Work Agreement Amendment Number One (FDOT participating in Expense)

F:\Nigwe\Agreement\FDOT Utilty Amendment 1 Final.doc.docx



NOTE: IT IS INTENDED THAT THE CONTRACTOR WILL REUSE THE TEMPORARY FACILITIES INSTALLED FOR THE INSTALLATION OF THE 24" WATERMAIN (ROLLERS, TEMPORARY PILING, FENCING, GUIDE POSTS, ETC.)

WEST PALM BEACH
24" WATERMAIN ICW CROSSING

BEGIN BORING
DRILL PIT LOCATION FOR
DIRECTIONAL DRILL ACROSS ICW.
FORCEMAIN TO BE CAPPED FOR
CONNECTION TO FUTURE
PIPELINE



EXHIBIT B

DRAWING NUMBER: K:\WPB-Civil\044063060\CADD\044063060\DWG\EXHIBIT B-OVERALL SITE PLAN.dwg -2 Sep 03, 2010 B:37am b.y. on/ll/revise				SHEET NUMBER EX-B 231 1 OF 1			
DESIGN ENGINEER KEVIN M. SCHAHEN FLORIDA REGISTRATION NUMBER 60251				DATE FLORIDA			
WATER MAIN AND FORCE MAIN ICW CROSSING FOR THE CITY OF WEST PALM BEACH AND THE TOWN OF PALM BEACH PALM BEACH, FLORIDA				DATE AUG 2010			
Kimley-Horn and Associates, Inc. 2500 KIMLEY-HORN AND ASSOCIATES, INC. 33407 415 PHONE (561) 845-2855 FAX (561) 851-8175 WWW.KIMLEY-HORN.COM CA 0000686				PROJECT NO. 04-063060			
SCALE AS NOTED				DATE AUG 2010			
DESIGNED BY SS				PROJECT NO. 04-063060			
DRAWN BY SS				CHECKED BY PMS			
DATE				DATE			
REVISIONS				REVISIONS			
NO.				NO.			

EXHIBIT C

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

Date: 09/03/10

Town of Palm Beach 24-inch Forcemain ICW Crossing

Item No.	Description	Quantity	Unit	Unit Price	Extended Price
HDD FORCE MAIN WORK ELEMENTS					
73-TN	Mobilization/Demobilization for HDD Work - Force Main	10% FM HDD	LS	\$ 136,000.00	\$ 136,000
74-TN	Maintenance of Traffic for HDD Work-Force Main	8% FM HDD	LS	\$ 101,000.00	\$ 101,000
75-TN	Permit Fee Allowance- Force main	1	ALLOW	\$ 1,500.00	\$ 1,500.00
76-TN	Site Restoration for HDD Work- Force Main	1	LS	\$ 15,000.00	\$ 15,000.00
77-TN	Temporary Electrical Service to Lift station for HDD Work- Force Main	1	LS	\$ 7,500.00	\$ 7,500.00
78-TN	Removal of Sanitary Sewer - Force Main	75	LF	\$ 40.00	\$ 3,000.00
79-TN	24-inch HDPE forcemain (HDD)	2670	LF	\$ 450.00	\$ 1,201,500.00
80-TN	24" HDPE adaptor w/SS Insert, restrained cap, and vent	2	EA	\$ 15,000.00	\$ 30,000.00
Sub Total : Force Main HDD Work Items					\$ 1,495,500
82-TN	Frac-Out Response - Force main	1	ALLOW	\$ 100,000	\$ 100,000
	Contingency	10% Total	LS	\$ 159,550	\$ 159,550
TOTAL					\$ 1,755,050.00

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - Old Business

Agenda Title

RESOLUTION NO. 101-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to AECOM USA, INC., in the Amount of \$74,468 for the A-42 and A-43 Sanitary Pump Stations Improvements, Establishing a Design and Construction Documents Phase Budget of \$81,915 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete this Phase of Said Improvements.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated August 30, 2010, from H. Paul Brazil, Director of Public Works
- Resolution No. 101-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Award of Contract for Design Services and Construction Documents for the A-42 and A-43 Sanitary Pump Stations Improvements Project in the Accelerated Capital Improvement Program
Resolution No. 101-10

Date: August 30, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 101-10 authorizing the award of the A-42 and A-43 Sanitary Pump Stations Improvements Design and Construction Documents contract in the amount of \$74,468 to AECOM USA, Inc., and establishing a design phase budget of \$81,915.

GENERAL INFORMATION

Contained within the Accelerated Capital Improvement Program is the design and construction of improvements to A-42 and A-43 Sanitary Pump Stations. The work will consist of condition assessments of the stations, designs for replacement of the pump, motor and control systems, wet well coatings and other minor improvements. These stations are located at 3001 and 3400 So. Ocean Boulevard.

We have negotiated a Design and Construction Documents contract with AECOM USA, Inc., in the amount of \$74,468. Staff also recommends a project contingency of \$7,447, resulting in a total estimated amount of \$81,915.

FUNDING/FISCAL IMPACT

Funding for this Capital Improvement Program project is fully contained within the Accelerated Capital Improvement Fund.

TOWN ATTORNEY REVIEW

This is a standard resolution in a form previously approved by the Town Attorney for legal form and sufficiency.

JB:mrs

cc. Jane Struder, Director of Finance
Eric B. Brown, P.E., Assistant Director of Public Works/Operations
Douglas Terry, Water Resources Division Manager
Charles R. Langley, P.E., Senior Project Engineer
Lynda Venne, Purchasing Agent

RESOLUTION NO. 101-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF PALM BEACH, PALM BEACH COUNTY, FLORIDA,
AWARDING A CONTRACT TO AECOM USA, INC., IN THE
AMOUNT OF \$74,468 FOR THE A-42 AND A-43 SANITARY
PUMP STATIONS IMPROVEMENTS, ESTABLISHING A
DESIGN AND CONSTRUCTION DOCUMENTS PHASE
BUDGET OF \$81,915 FOR SAID IMPROVEMENTS, AND
AUTHORIZING THE TOWN MANAGER TO TAKE ACTIONS
NECESSARY TO COMPLETE THIS PHASE OF SAID
IMPROVEMENTS.

* * * * *

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

Section 1. The A-42 and A-43 Sanitary Pump Stations Improvements Design and
Construction Documents contract is hereby awarded to AECOM USA, Inc. for their proposal
amount of \$74,468, with a total design phase budget of \$81,915.

Section 2. The Town Manager is hereby authorized and directed to execute a purchase order
on behalf of the Town of Palm Beach for design and construction document services with AECOM
USA, Inc.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take
such further actions as may be necessary to effectuate the completion of the design and construction
documents for the A-42 and A-43 Sanitary Pump Stations Improvements.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - Old Business

Agenda Title

RESOLUTION NO. 103-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to AECOM USA, INC., in the Amount of \$58,118 for the A-42 to A-43 Force Main Improvements, Establishing a Design and Construction Documents Phase Budget of \$63,930, for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete this Phase of Said Improvements.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated August 30, 2010, from H. Paul Brazil, Director of Public Works.
- Resolution No. 103-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Award of Contract for Design Services and Construction Documents for the A-42 to A-43 Force Main Improvements Project in the Accelerated Capital Improvement Program
Resolution No. 103-10

Date: August 30, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 103-10 authorizing the award of the A-42 to A-43 Force Main Improvements Design and Construction Documents contract in the amount of \$58,063 to AECOM USA, Inc., and establishing a design phase budget of \$63,869.

GENERAL INFORMATION

Contained within the Accelerated Capital Improvement Program is the design and construction of improvements to A-42 to A-43 Force Main. The work will consist of replacing the existing 10" force main with a new 10" force main along the west side of So. Ocean Boulevard between A-42 and A-43. These stations are located at 3001 and 3400 So. Ocean Boulevard.

We have negotiated a Design and Construction Documents contract with AECOM USA, Inc., in the amount of \$58,063. Staff also recommends a project contingency of \$5,806, resulting in a total estimated amount of \$63,869.

FUNDING/FISCAL IMPACT

Funding for this Capital Improvement Program project is fully contained within the Accelerated Capital Improvement Fund.

TOWN ATTORNEY REVIEW

This is a standard resolution in a form previously approved by the Town Attorney for legal form and sufficiency.

JB:mrs

cc. Jane Struder, Director of Finance
Eric B. Brown, P.E., Assistant Director of Public Works/Operations
Douglas Terry, Water Resources Division Manager
Charles R. Langley, P.E., Senior Project Engineer
Lynda Venne, Purchasing Agent

RESOLUTION NO. 103-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO AECOM USA, INC., IN THE AMOUNT OF \$58,063 FOR THE A-42 TO A-43 FORCE MAIN IMPROVEMENTS, ESTABLISHING A DESIGN AND CONSTRUCTION DOCUMENTS PHASE BUDGET OF \$63,869 FOR SAID IMPROVEMENTS, AND AUTHORIZING THE TOWN MANAGER TO TAKE ACTIONS NECESSARY TO COMPLETE THIS PHASE OF SAID IMPROVEMENTS.

* * * * *

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

Section 1. The A-42 to A-43 Force Main Improvements Design and Construction Documents contract is hereby awarded to AECOM USA, Inc. for their proposal amount of \$58,063, with a total design phase budget of \$63,869.

Section 2. The Town Manager is hereby authorized and directed to execute a purchase order on behalf of the Town of Palm Beach for design and construction document services with AECOM USA, Inc.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of the design and construction documents for the A-42 to A-43 Force Main Improvements.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - Old Business

Agenda Title

RESOLUTION NO. 105-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for \$35,300 to Kimley-Horn and Associates, Inc., for the Sewage Force Main Intracoastal Waterway Crossing Construction and Bid Administration Services, Establishing a Total Construction Phase Budget of \$40,600 for Said Services, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated September 2, 2010, from H. Paul Brazil, Director of Public Works.
- Resolution No. 105-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Award of Sewage Force Main Intracoastal Waterway Crossing Project Construction
Phase Services
Resolution No. 105-10

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 105-10 authorizing the award of the Sewage Force Main Intracoastal Waterway Crossing Project Bidding and Construction Phase Services in the amount of \$35,300 to Kimley-Horn and Associates, Inc. (Kimley-Horn), and establishing a construction phase budget of \$40,600.

GENERAL INFORMATION

Town staff is working with the City of West Palm Beach (City) on a joint project to have a new sewage force main subaqueous crossing beneath the Intracoastal Waterway, to be constructed with the City's replacement water main. The replacement of the City's waterline is necessary because of the construction of the Flagler Memorial Bridge. An item considered earlier on this Town Council Agenda is a recommendation to approve an Interlocal Agreement with the City for this shared project. Assuming Council has approved the Interlocal Agreement, it will be necessary to enter into an agreement with Kimley-Horn to provide bidding phase services, as well as construction management services for the project.

FUNDING/FISCAL IMPACT

The bidding and construction phase services to be provided by Kimley-Horn will be "hourly not to exceed", up to \$35,300 for the scope of services identified in their proposal. Funding for this work authorization is contained within the Town's Accelerated Capital Improvement Program.

TOWN ATTORNEY REVIEW

This is a standard resolution in a form previously approved by the Town Attorney as to form and legal sufficiency.

HPB:mrs

cc: Jane Struder, Director of Finance
Eric B. Brown, P.E., Assistant Director of Public Works
Charles R. Langley, P.E., Senior Engineer
James M. Bowser, Town Engineer
Doug Terry, Water Resources Division Manager

RESOLUTION NO. 105-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT FOR \$35,300 TO KIMLEY-HORN AND ASSOCIATES, INC., FOR THE SEWAGE FORCE MAIN INTRACOASTAL WATERWAY CROSSING CONSTRUCTION AND BID ADMINISTRATION SERVICES, ESTABLISHING A TOTAL CONSTRUCTION PHASE BUDGET OF \$40,600 FOR SAID SERVICES, AND AUTHORIZING THE TOWN MANAGER TO TAKE ACTIONS NECESSARY TO COMPLETE SAID SERVICES.

* * * * *

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

Section 1. The sewage force main intracoastal waterway crossing project construction phase and bid administration services is hereby awarded to Kimley-Horn and Associates, Inc., for their proposal amount of \$35,300, with a total construction phase budget of \$40,600.

Section 2. The Town Manager is hereby authorized and directed to execute a purchase order on behalf of the Town of Palm Beach for construction phase services with Kimley-Horn and Associates, Inc.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of the construction phase services for the sewage force main intracoastal waterway crossing project construction and bid administration services.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 14th day of September 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

Recreation Advisory Commission's Intended Process and Timeline for Consideration of Privatization Alternatives and Other Potential Modification of Recreation Programs and Facilities.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated September 3, 2010, from Jay Boodheshwar, Director of Recreation and Special Projects
- Minutes from the September 1, 2010, Recreation Advisory Commission Meeting

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects

Re: Recreation Advisory Commission's Intended Process and Timeline for Consideration of Privatization Alternatives and Other Potential Modification of Recreation Programs and Facilities

Date: September 3, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council review the Recreation Advisory Commission's intended process and timeline for consideration of privatization alternatives and other potential modifications of recreation programs and facilities, and provide feedback as necessary.

GENERAL INFORMATION

At the July 13, 2010, Town Council meeting, Council formally introduced the concept of privatization of recreation facilities. Staff was directed to use the upcoming months to study various privatization options and also analyze current department operations to determine if there are more cost effective methods for providing recreational services. Staff was directed to engage with the Recreation Advisory Commission to complete this task, and provide feedback to the Mayor and Town Council for consideration at a later date.

At the September 1, 2010, Recreation Advisory Commission (RAC) meeting the commission members began the task of determining how to effectively evaluate the merits of privatizing certain functions or entire facilities of the Recreation Department, as well as completing a thorough review of department operations to determine how program subsidies could be reduced or eliminated if full privatization was concluded to be unappealing. Approximately 30 (thirty) citizens attended the first meeting. In an effort to organize the dialogue and provide perspective (from an historical standpoint and to define privatization) an outline of department background information and various privatization concepts were presented. This was followed by the determination of a review process and timeline by the RAC members.

RAC Chairperson, Mrs. Dani Moore, proposed a review process that would involve the establishment of "study groups" comprised of staff, RAC members, and resident users of the recreational facilities. The study groups would include Town Docks, Par 3 Golf Course, Recreation Center, and Tennis Facilities. After receiving support from the commissioners, members submitted the areas that were of most interest to them. These study groups will meet (in the Sunshine) to complete thorough reviews of facility operations, policies, staffing, and

budgets, including options for privatizing either service delivery or entire facilities and will report findings and provide recommendations to the RAC. The RAC will discuss findings and recommendations of the study groups and make final recommendations to the Mayor and Town Council.

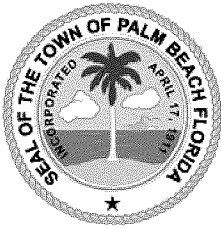
Chairperson Moore has made the following assignments to the Study Groups: (Mrs. Moore will chair each group, with the support of the Director of Recreation and appropriate staff)

- Town Docks: Daniel McDonnell, Pamela McIver
- Recreation Center: Chris Storkerson, Donald Singer
- Par 3 Golf Course: Steve Hall, Tim O'Hara
- Tennis Facilities: Joe Della-Giustina, Henry Jamison, Ellen Howe

After determining that it may take multiple meetings of the Study Groups, the following timeline for the review process was determined:

- September 1, 2010, Recreation Advisory Commission Meeting: Defined process and timeline for studying privatization alternatives and other potential modification of recreation programs and facilities
- September 14, 2010, Town Council Meeting: Submit Progress Report to the Mayor and Town Council
- September 15, 2010: Deadline for resident facility users who would like to serve on a study group (Mrs. Moore will not make the resident appointments until after this date)
- Week of September 20 and 27, 2010: Study Group meetings
- October 6, 2010 Special RAC Meeting: Review Study Group preliminary findings
- October 2010: Follow up Study Group meetings (as necessary)
- November 3, 2010, Recreation Advisory Commission Meeting: Review findings and recommendations of Study Groups
- November to December: Refinement of findings and recommendations, and follow up with Study Groups (as necessary)
- January 5, 2011, RAC Meeting: Determine final recommendations to Town Council
- February 8, 2011 - Presentation to Mayor and Town Council

c: Recreation Advisory Commission



TOWN OF PALM BEACH RECREATION DEPARTMENT

MINUTES OF THE RECREATION ADVISORY COMMISSION HELD ON WEDNESDAY, SEPTEMBER 1, 2010

I. CALL TO ORDER & ROLL CALL

A meeting of the Town of Palm Beach Recreation Advisory Commission was held on September 1, 2010, at the Recreation Center. The meeting was called to order by Mrs. Danielle More, Chairwoman at 9:00 a.m. Commission members in attendance were Mr. Della Giustina, Mr. Stephen Hall, Mrs. Danielle Moore, Mr. Henry Jamison, Mr. Daniel McDonnell, Mr. Donald Singer and Mr. Timothy O'Hara. Alternate members in attendance were Mrs. Pamela McIver and Mr. Chris Storkerson. Absent from the meeting was Dr. Ellen Howe. Staff members in attendance were Director Mr. Jay Boodheshwar, Assistant Directors Mr. Alan Brown and Mr. Rod Gardiner, Dockmaster Mr. Jon Luscomb and Office Manager Mrs. Lisa Walkowich. Also in attendance were Town Council President Pro Tem Mrs. Gail Coniglio, and Council Members Mr. William Diamond and Mr. Richard Kleid.

II. COMMUNICATIONS FROM CITIZENS

Mrs. Moore entered into the minutes two letters that were received from residents regarding the potential privatization of the Recreation Department programs or facilities.

The following residents provided public comment:

Mrs. Missy Agnello stated that she strongly opposes the privatization of the recreation services.

Mr. Phil Smith stated that he opposed the privatization of the Recreation Department.

Mr. John McDonald stated one of the reasons he moved to Palm Beach was because of the recreation services provided, he felt the Town was doing a great job and the department should not be privatized.

Mrs. Lynn George said that she has lived here since 1966 and gave one of the first contributions to build the recreation center. She stated that she was opposed to privatizing the recreation department.

Mr. Hagenback stated that he did not understand the rationale of the privatization and was opposed.

Mrs. Beth Cole stated that she has used the recreation center for 14 years and said that if the Town does not retain control of these facilities then there is no guarantee that they will continue to be Town serving. These facilities are an integral part of the quality of life to the residents of this community.

Mr. Steve Marks stated that he was opposed to the privatization of the recreation department, particularly tennis. He stated that if the Town cannot make money running the tennis facility an outside company would not be able to unless they destroyed the facility.

Additional members of the public also provided feedback throughout the rest of the meeting.

III. APPROVAL OF AGENDA

Mrs. Moore asked if there were any changes to the agenda. There were none. Mr. Della Giustina made the motion to approve the revised agenda, seconded by Mr. Singer, all were in favor.

IV. APPROVAL OF MAY 5, 2010, MEETING MINUTES

Mrs. Moore asked for a motion to approve the May 5, 2010, minutes. Mr. Della Giustina made the motion to approve the minutes, seconded by Mr. McDonnell, all were in favor.

V. OLD BUSINESS – none

VI. NEW BUSINESS

A. Approval of 2010/2011 Meeting Schedule – Mrs. Moore asked for a motion to approve the meeting schedule. Mr. Della Giustina made the motion to approve the schedule, seconded by Mr. O'Hara, all were in favor.

B. Review Annual Report Outline to the Mayor and Town Council – Mrs. Moore stated that at the October 12, 2010, Town Council Meeting Mr. Della Giustina would be giving the commission's annual report. She asked Mr. Boodheshwar to give an update of the annual report.

Mr. Boodheshwar stated that every year the various boards and commissions prepare an annual report to present to the Mayor and Town Council. He stated that the commissioners had received a copy of the draft outline of the report and asked if there were any suggestions for specific items the commission would like included. There were none. Mr. Boodheshwar stated that once the report was finalized he would send copies to all the commissioners before the presentation to the Town Council.

C. Discussion Regarding Privatization of Recreation Facilities – Mrs. Moore reported that Mr. Boodheshwar would begin the discussion by providing

background information on the Recreation Department's history, current structure, department policies and a financial overview of the past five years as well as the financial plan for the next 10 years.

Mr. Boodheshwar began with a brief history of the department beginning with the establishment of a Playground Commission in 1932, which was formed to oversee and advise on public recreation programs and facilities. He provided milestone dates in the evolution of the Recreation Department, including when the various facilities first opened.

Mr. Boodheshwar reviewed the department's mission statement and the 5 program areas that comprise it. He explained that the department functions as an enterprise operation, and serves as the primary provider of public recreation on the island.

Mr. Boodheshwar stated that in 2006 the recreation department staff completed an internal operational self-assessment which has resulted in departmental re-organization, staff reduction through attrition, and budget/revenue enhancement.

Mr. Boodheshwar stated that during the 2008 Comprehensive Review of Town Operations, staff had determined that subsidy levels could be decreased by reducing certain expenses and adding new/expanded revenue sources. Staff had cautioned at that time against any excessive increase in "transfer of services" to the General Fund, as a variety of capital improvements would be necessary at several facilities in the near future.

Mr. Boodheshwar reviewed staffing levels, including the attrition rate since 2007.

Mr. Boodheshwar reviewed the operational and fiscal policies for the department. He said that as an enterprise fund staff worked towards maintaining a balance between service and profit motives. Current cost recover goals for each division are: Town Docks – 330% (revenue is generated through annual and seasonal leases and transient business.); Golf Course – 100% (revenue is generated through green fees, cart rentals, club rentals, practice range and golf pro fees.) Tennis Facilities/Programs – 30% (revenue sources, including court usage fees, annual passes, tennis pro fees, tournaments and special event registrations.); Recreation Center – 40% of all costs and 100% of direct costs of programs, including class supplies and contractual instructors. He pointed out that approximately \$200,000 of the recreation center budget was for maintenance of the park.

Mr. Boodheshwar reviewed the 5-year variances of each program area of the department's budget. Over all for the department there has been a 7% increase in operating revenues and a 6% increase in operating expenses from FY2006 – FY2010.

Mr. Boodheshwar reported that staff had prepared a long-term financial plan in the spring of 2010. He said that we anticipate that over the next 10 years expenses are projected to increase by 2% annually and revenue is expected to increase 3% annually.

Mr. Boodheshwar reported that the privatization questions to be studied included: 1) should the town be in the business of providing recreational services? Is it a primary function?, and 2) should recreational facilities be leased to private operators, eliminating the current subsidies of certain programs and potentially allowing for additional funds to be generated for broader Town use?

Mr. Boodheshwar reviewed the various types of privatization concepts, but explained that privatization is generally accepted as a process that transfers services, previously performed by the government to the private sector. Popular approaches that have been used by other municipalities include, contracting out, management companies, short term and long term leases and the sale of assets.

He stated that currently the Recreation Department has privatized certain functions including, security services at the docks, maintenance labor at the Par 3, program instructors and sports officials at the recreation center, hedge trimming at Seaview and Phipps parks, janitorial services and teaching services at tennis and golf facilities, to name a few.

Mrs. Moore thanked Mr. Boodheshwar for his report and explained the review process for the privatization study. Study groups comprised of Recreation Advisory Commissioners and resident users of recreation facilities would be established for all of the recreational facilities. Mrs. Moore, Mr. Boodheshwar and the appropriate recreation staff members would participate with each study group.

The study groups will hold public meetings to complete a thorough review of facility operations, policies, staffing and budgets, including options for privatizing either service delivery or entire facilities. Study groups will report their findings and provide recommendations to the Recreation Advisory Commission who will discuss these recommendations and make a final recommendation to the Mayor and Town Council.

Mrs. Moore reported that the entire process will take months and require several meetings. It was decided to hold study group meetings the last two weeks in September and have the groups, report back at a special Recreation Advisory Commission meeting on October 6, 2010. Based on the findings of the commission, further discussion by the study groups would take place in October and November with a presentation by the Recreation Commission to the Mayor and Town Council sometime in December or January.

After a lengthy discussion and questions and comments by the residents in the audience Mrs. Moore asked the commissioners to give their opinion on the subject of privatization. Mr. Singer stated that we are going to go through a very important process with direction from the council that they want a complete study before making any decision. Mr. Hall stated that he was pleased that so many residents came to the meeting to voice their opinion. He said that it seemed that the study was an exercise in futility and felt that we had wonderful recreation

facilities that we should hold onto. Mr. McDonnell said that we service the community from 2 months old to seniors. He said that he had done some research regarding municipal recreation and found that most have tax supported recreation. He said that he would be as unbiased as possible during the study. Mr. O'Hara said that he didn't feel that the department as a whole needed to be privatized but had no objection to looking at specific items within the department that could possibly be privatized. Mr. Della Giustina said that he did not see privatization being beneficial to the Town but would complete the study with an open mind. Mr. Jamison stated that we have brand new assets and it's hard to imagine that we would let go of them and put someone else in charge. He said that he will do what has been asked, but felt it would be better to look at the department as a whole and not as individual divisions. Mrs. McIver said that she felt that she was open to the study and it would be interesting to see if there were areas that could be privatized. She didn't feel that it would be wise to privatize the department as a whole. Mr. Storkerson said that he felt the study was going to be extremely important and that it plays into a bigger picture of what is going on in the Town. He said that he felt that this was also a quality of life issue that needs to be addressed and maybe there are some areas where we can improve, but not lose sight of longer term goals for the sake of short term finances and that we act in a unison group.

VII. ANY OTHER MATTERS

- A. September 2010, Staff Report - Mr. Boodheshwar asked the commission if there were any questions regarding the report that they had received. There were none.

Mrs. Moore acknowledged the Mr. Rick Dytrych, retired as the Golf Pro Manager on August 16, 2010. She stated that he has served the community well and has done an outstanding job in the 32 years that he worked for the Town. Mr. Boodheshwar also thanked Mr. Dytrych for his service to the Town and dedication to the Par 3. He said reported that due to the upcoming privatization study, staff will not fill this position until it permanently deciding what approach will be used for management and leadership for the Par 3. He stated that Mr. Alan Brown will serve as manager of the Par 3 and Mr. Rod Gardiner will take on the management of tennis operations in the interim.

VIII. ADJOURNMENT

The meeting was adjourned by Mrs. Moore at 11:55 a.m.

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

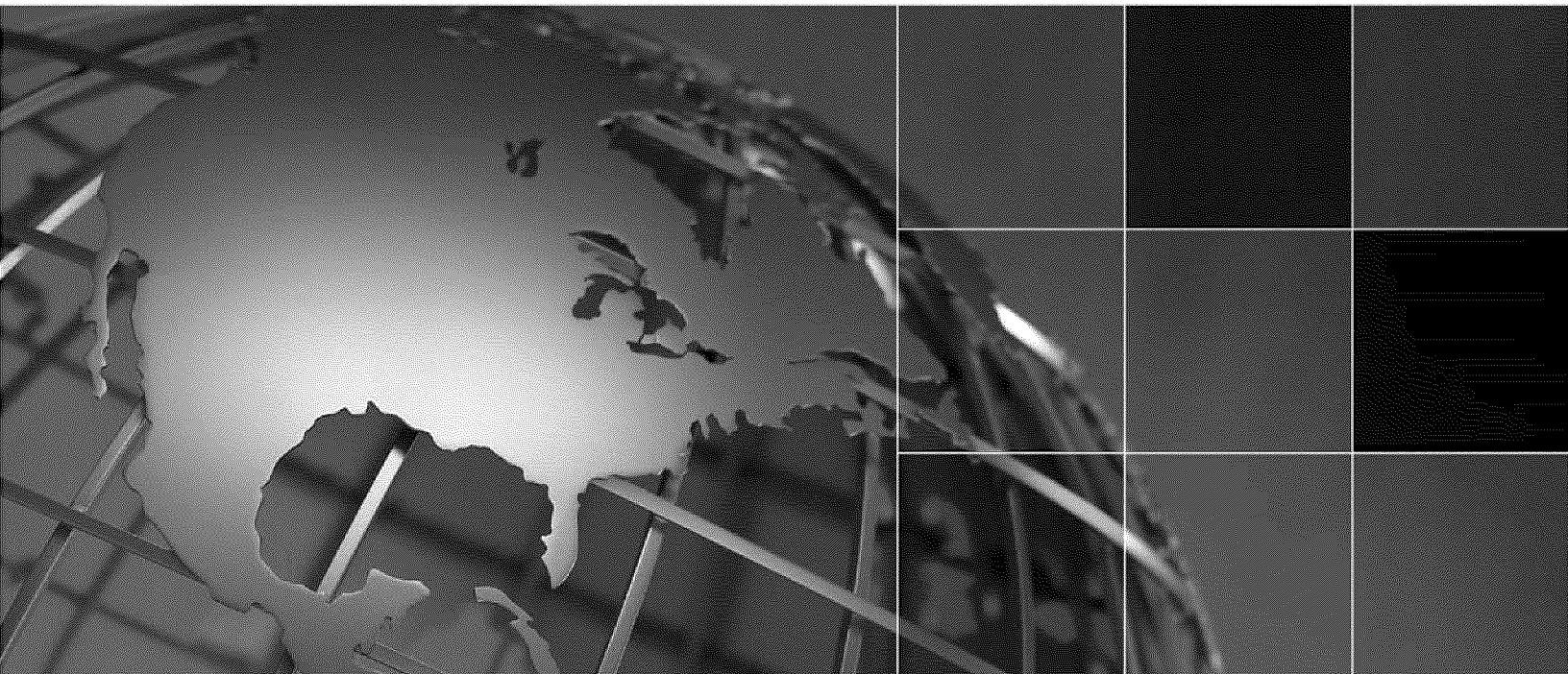
Internal Audit Reports.

Presenter

Robert Wildrick, Town Council Member

Supporting Documents

- Construction Project Bidding and Contract Administration Report
- Construction in Porcess Accounting Report



Town of Palm Beach

Internal Audit Report
Construction Project Bidding
And Contract Administration
May 2010

Town of Palm Beach

Internal Audit Report Construction Project Bidding and Contract Administration

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I. Executive Summary

Crowe Horwath LLP (Crowe) performed an internal audit of the Town's Construction Project Bidding and Contract Administration functions for a sample of construction projects from the time period spanning October 1, 2008 to March 31, 2010.

OVERVIEW

The overall objective was to review the policies, procedures and controls over the Town's construction project bidding and contract administration for the period noted above. The basis for our project plan was developed from two primary documents. The first document was Procedure No. 1-02-7 *Construction Contracts and Project Management Procedures* (the "Construction Policy") and the second document was the Town's Purchasing Policy and Procedures Manual (the "Purchasing Policy") that has an effective date of October 2009. For projects that were sampled prior to this effective date, we reviewed these in conjunction with the purchasing policies and procedures effective at that time. We discussed compliance with these policies and procedures with employees of the Town's Departments of Public Works and Purchasing and reviewed certain available records from project files.

REPORTING METHODOLOGY

In this report, we provide a summary of our results and recommendations as well as management's responses. To assist you in analyzing our recommendations, we have provided our suggestions for corrective action based on the finding's exposure to loss or increased regulatory scrutiny, as follows:

High – Requires *immediate* remedy and, if left uncorrected, exposes the Town to significant or immediate risk of loss, asset misappropriation, data compromise or interruption, fines and penalties, or increased regulatory scrutiny.

Moderate – Requires *timely* remedy and, if left uncorrected, may expose the Town to risk of loss or misappropriation of company assets, compromise of data, fines and penalties, or increased regulatory scrutiny. These issues should be resolved in a timely manner, but after any high priority issues.

Low – Should be addressed as time and resources permit. While it is not considered to represent significant or immediate risk, repeated oversights without corrective action or compensating controls could lead to increased exposure or scrutiny.

Best Practice – Represents operational efficiencies or improvements for consideration by management based on industry best practices and Crowe's experiences.

**Town of Palm Beach
Internal Audit Report
Construction Project Bidding and Contract Administration**

SUMMARY OF RESULTS

The table below displays the number of recommendations identified through our procedures, categorized by priority.

Risk Rating	Total
High	2
Moderate	5
Low	-
Total	7

Best Practice	2
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Detailed observations and recommendations are provided in Section II – Results and Recommendations. The most significant issues identified during our assessment include the following:

- **Unapproved Purchase Orders** – Instances were noted where purchase orders were executed without adherence to the Town's Policies and Procedures.
- **Adequacy of Bid Documents** - Instances were noted where bid specifications, contract plans and drawings submitted for bids were unclear or inconsistent with approved needs.
- **Billing Requisitions and Change Orders** - Instances were noted where billings or change orders were approved under lump sum requests and did not use an appropriate form for requisitions and were not accompanied by a schedule of values.
- **Written Status Reports** – We were unable to verify that written status reports were provided to the Town Manager on a monthly basis.
- **Controls over the Receipt of Supplies and Materials** – Through our inquiry with the Town's Purchasing Agent, it was found that the Town has insufficient internal controls over the receipt of inventory into the warehouse.
- **Availability of Audit Records** - Insufficient documentation was available for us to be able to corroborate if various attributes outlined in our scope of work were performed in accordance with Town Policies.

In addition to the items summarized above, other items are also documented in Section II that do not represent significant risk at this time, but offer opportunities for the Town to further strengthen controls and processes.

Thank you for this opportunity to report the results of our procedures. We also wish to thank the various Town personnel for their cooperation and assistance.

II. Results and Recommendations

Below are the results and recommendations of our procedures performed:

Finding # 1: Unapproved Purchase Orders and Invoices
Risk Rating: High

Supplies and materials purchased from HD Waterworks, invoice number 8998099, dated 9/30/2009 were purchased despite the following exceptions to Sections 6-1.3 and 14-2.1, 2.2 and 2.6 of the 2004 Town purchasing manual (effective policy as of date of purchase):

- Three written quotations were not obtained;
- Purchases were made directly from a vendor bypassing the Purchasing Division;
- Committing to a purchase before securing an authorized purchase order;
- Purchase was not made from the lowest responsible and responsive bidder;
- Purchase lacked approval by an authorized party.

The following contracts or awards were issued prior to the participation of the Purchasing Division which violates requirements noted in Section 6 of the Town's purchasing manual:

PO Number	Contract	Contractor	Final Contract Value
801356	D-8 Collection SSRP	Chaz Equipment	\$ 1,763,256
100445	STP Consulting Services	Applied Technology Mgt	\$ 162,670
901350	Restoration of Dunes	Applied Technology Mgt	\$ 69,000

We also noted related to PO 900271, (D-8 Storm, Dee Griffin, \$21,300), the project proceeded without a competitive bid and any documentation supporting the rationale for limited competition or sole vendor selection purchase as required by section 6-1.3 of the purchasing manual.

Departures from established policies increase the risk that the Town may pay significantly more for supplies and materials than required.

Recommendation

Greater emphasis needs be placed on the importance of compliance with established policies and procedures. Employees should be aware of remedial action to take in response to deviations from such policies and provided with a means to communicate concerns, anonymously if preferred, without fear of retribution. Actions that can assist in the Town's efforts include:

- Implement a whistle-blower program for employees to use if incidents have been reported to their immediate supervisor and not adequately resolved or reporting to their supervision would be inappropriate.
- Require periodic completion of training and awareness programs that promote ethical behavior.
- Periodically remind employees of the Town's code of ethics, policies and procedures, with remedial and disciplinary actions to be taken in the event of violations.
- Require periodic inspections of key processes and procedures by parties independent of the processing source.

Management Response/Action Plan

Invoices

HD Waterworks, invoice number 8998099, dated 09/30/2009 - The materials purchased from HD Waterworks were approved by Public Works staff but had not been approved by Purchasing prior to placing the order. These materials were not part of an emergency repair and should not have been purchased without the necessary purchase order number. All Public Works employees have been informed that this type of direct purchase is not permitted even in the case of an emergency. Additional remedial training will be provided as necessary and employees who bypass the appropriate process will be disciplined accordingly.

Purchase Orders

P.O. # 801356 - CHAZ EQUIPMENT - Three quotations were obtained by Public Works.

P.O. # 100445 and # 901350 - APPLIED TECHNOLOGY MANAGEMENT - The RFP process for both of these items was conducted by Public Works.

P.O. # 900271 - DEE GRIFFIN – A single quote was obtained by Public Works. Notes on requisition approval indicated that it was an emergency: "Work is needed to be done prior to 11/14/08 milling and re-surfacing. Contractor has been approved by Town Council for general utility work."

Town staff met with legal counsel, Bruce Alexander, in 2007 - 2008 to evaluate our contracting methods. The following purchasing method was identified through the consultation and was used for several capital projects, including P.O. 801356 and P.O. 900271:

- Prequalify contractors for general areas of work (i.e. underground utilities, pump station construction, etc.)
 - Competitively bid projects between the group or
 - Negotiate a price with an individual contractor for smaller projects (less than \$100,000)
1. Following the advice of legal counsel, it was determined that awarding work to one of the pre-qualified contractors without competitive bidding among all contractors was an appropriate procurement method for expediting projects. Nevertheless, this practice has been discontinued. All projects will follow the bidding policies and procedures set forth in the Purchasing Manual. The Purchasing Division will handle all bid and RFP solicitations and will review all Council Agenda items recommending award. Items requiring Town Council approval will include a new section in the memo to the Mayor and Town Council, titled "Purchasing Review". Similar to the "Town Attorney Review", this will provide verification of the Purchasing Division's involvement with the procurement process.

Individual(s) Responsible: Peter Elwell, Town Manager and Jay Boodheshwar, Director of Recreation and Special Projects

Due Date: October 12, 2010

2. As per recommendation by Crowe Horwath that greater emphasis be placed on the importance of compliance with established policies and procedures, the Town Manager has issued a directive and several Payday Post communications to all employees indicating that all purchases must be conducted in strict compliance with the Town Purchasing Policies and Procedures.

Individual(s) Responsible: Peter Elwell, Town Manager

Due Date: Completed

**Town of Palm Beach
Internal Audit Report
Construction Project Bidding and Contract Administration**

3. A Power Point presentation has been developed regarding Purchasing Policies and Procedures. Seminars have been conducted with each department. This included question and answer session and the distribution of the current Purchasing Manual.

Individual(s) Responsible: Peter Elwell, Town Manager and Lynda Venne, Purchasing Agent
Due Date: Completed

4. A whistle-blower program for employees exists in the form of the Town's Ethics Hotline. Dissemination of information, reminding employees of the Ethics Hotline will be completed.

Individual(s) Responsible: Peter Elwell, Town Manager and Danielle Olson, Director of Human Resources
Due Date: November 1, 2010

5. Periodic Inspections of procurement process will be completed by the Town's auditors. A designee of the Town Manager will also conduct random audits from time to time.

Individual(s) Responsible: Peter Elwell, Town Manager and Jane Struder, Director of Finance
Due Date: February 1, 2011

Finding # 2: Bid specifications, contract plans and drawings are unclear or inconsistent with approved needs

Risk Rating: High

Specifications submitted under a solicitation to bid for PO # 901217, the Sand Transfer Plant, required multiple addendums caused by various revisions to approved engineering plans.

Of the contracts selected for testing, the following projects had change orders ranging from 18% to 110% of the original contract value:

PO Number	Contract	Contractor	Initial Value	Final Value	CO as % of Initial Contract Value
801356	D-8 Collection SSRP	Chaz Equipment	\$ 839,148	\$ 1,763,256	110%
900945	Par 3 Course - Site Infrastructure	Chaz Equipment	\$ 498,737	\$ 759,879	52%
901172	E-11 Lift Station SSRP	Chaz Equipment	\$ 122,500	\$ 151,138	23%
901217	Sand Transfer Plant Renovation	Murray Logan	\$ 2,248,000	\$ 2,647,239	18%

The absence of appropriate documentation for changes in the scope or contract price of projects represents a significant fraud risk and exposure to loss.

Recommendation

Controls over estimating and bidding should provide for adequate documentation, clerical verification, and overall review that contract specifications, plans and drawings reflect all relevant cost elements. The Town should have prescribed procedures to review the completeness and reasonableness of the final bid specifications and plans presented for bidding; for example, a second independent review / estimate may be desirable on complex or large contracts.

Management should review and regularly evaluate the status of the total estimated costs and status on contracts in progress to provide information that would enable management to take corrective action, where applicable, to effectively manage contracts. Management's review should be comprehensive and documented in the individual project's files. Detailed actual costs plus reasonable estimate of costs to complete all phases should be compared with the details of the original estimate and the total contract price. Information considered in the review should include:

- Cost records
- Open purchase orders and commitments
- Engineering progress reports
- Project management status reports
- Conferences with project engineers and independent architects
- Correspondence files, and
- Change orders

Controls should be established over claims, extras, back charges and similar items to provide reasonable assurance such items are authorized, properly documented, and provide for accumulation of related costs.

Management Response/Action Plan

Purchase Orders

P. O. # 801356 - CHAZ EQUIPMENT CO. - D-8 COLLECTION SSRP - The purchase order was issued in the amount of \$839,148.00. There were 7 change orders issued with a final value of \$1,763.256 for an increase of 110% of the original contract. The majority of the increase in project cost was due to the addition of water line work that was reimbursed by the City of West Palm Beach. Staff should have bid this work as an alternate, as opposed to using the change order process. The remaining is attributable to increases in scope of work during construction that should have been addressed in the design phase.

P. O. # 900945 - CHAZ EQUIPMENT CO. - PAR 3 GOLF COURSE RENOVATION - The purchase order was issued in the amount of \$498,737.00. There were 5 change orders issued with a final value of \$759,879.66 for an increase of 52% of the initial contract value. The main reason for the increase in contract value related to the installation of sewer pipes in the swale for an unrelated project. Although piggybacking on the Par 3 contract was intended to save costs, such as mobilization, and perform the additional work while the golf course was under construction, this is not a good practice and will be avoided in the future.

P. O. # 901172 - CHAZ EQUIPMENT CO. - E-11 LIFT STATION SSRP - The purchase order was issued for \$122,500. There were two change orders issued with a final value of \$151,138 for an increase of 23% of the initial contract value. The first change was for overlaying Pelican Lane to avoid the need for two utility trenches (aesthetics) and the second one was for upgrading the capacity of the lift station lid to

withstand traffic weight loads because the final location of the structure extended out into the travel lane instead of being on the shoulder. The paving item should have been addressed during the design phase of the project.

P. O. # 901217 - MURRAY LOGAN CONSTRUCTION INC. - SAND TRANSFER PLANT RENOVATION - Bid No. 2009-13 – Four addendums were issued to the bid and four change orders were issued to the purchase order. The original purchase order was issued for \$2,248,000 with a final value of \$2,647,239.93 for an increase of 18% of the initial contract value. The vast majority of the increase in project cost was due to unforeseen concrete repairs necessary to restore the structure. These types of restoration projects should allow for additional field investigation during the design phase to minimize the additional unanticipated construction cost.

1. Additional controls are being developed to provide adequate review of contract specifications, plans and drawings that will reflect all cost elements prior to issuance of a bid document. Procedures will be developed documenting that the specifications, plans and drawings have been reviewed for completeness and reasonableness. The final bid specifications, plans and drawings shall be 100% complete prior to bidding. As outlined in the Construction Contracts and Project Management Procedure, a quality control review will be conducted for each project with the design engineer and Town personnel prior to advertising for bids for any underground work. The appropriate amount of geotechnical evaluation and underground utility location will be secured to ensure a thorough review of the underground conditions, when applicable. Cost estimates shall be obtained and a peer review will be conducted for verification of cost estimates on the complex larger contracts. Pre-bid meetings will be conducted as standard procedure to address any issues with the bidding contractors to assist in alleviating any potential ambiguities resulting in change orders after award. Separate contracts will be considered when significant increases in scope occur.

A new set of Professional Service Agreements for Civil Engineering services associated with the Capital Improvement Program has recently been executed. These services include complete bid specifications, construction drawings, construction phase services (inspections, verification of pay requests/change orders), and as built drawings. Staff also has budgeted for and is in the process of securing additional professional resources to oversee the capital program. This will include technical assistance on individual projects/programs as well as assistance with strengthening our overall procedures in accordance with the audit comments in this finding.

Individual(s) Responsible: Jay Boodheshwar, Director of Recreation and Special Projects
Due Date: December 1, 2010

2. With the increased scrutiny of the plans and specifications and the procedure for thorough investigation of the existing project site, change orders are expected to be reduced. However, a procedure will be developed for processing change orders that will include items such as a Request for Information (RFI) to the design engineer for their evaluation of the change order request and development of an estimated cost. The design engineer will document the necessity for the change and the appropriate corrective action. All changes will be thoroughly documented and investigated by the design engineer and the Town Project Engineer. Change order requests will have the design engineer changes reflected in the specifications and/or plans, cost estimate, contractor proposal and use of AIA form signed by each party.

**Town of Palm Beach
Internal Audit Report
Construction Project Bidding and Contract Administration**

The Town has recently begun using different contract delivery systems such as Construction Manager at Risk (i.e. Town Hall renovation, Seaview Tennis Center improvements, and Worth Avenue improvements), which has proven to be extremely successful with quality and budget controls. This has typically been reserved for larger projects. Staff has begun "bundling" some smaller projects (i.e. sections of force mains) into one larger project to take advantage of this delivery mechanism.

Individual(s) Responsible: Jay Boodheshwar, Director of Recreation and Special Projects
Due Date: January 1, 2011

3. In addition to the written status reports indicated in Finding #4, Public Works management will maintain a reporting system that provides the current status of each project, making it easy for completing reviews. This report shall provide an ongoing comprehensive overview and will document the review process being utilized by management in keeping projects on track. Management reviews will be documented in each individual project file. Emphasis will be placed on detailing actual cost and comparison with original engineering estimates and total contract price. This will assist in completing projects within budget and on time.

Information to be considered in the management review will include:

- Cost records
- Open purchase orders and commitments
- Engineering progress reports
- Project management status reports
- Conferences with project engineers and/or independent architects
- Correspondence file
- Change orders

Individual(s) Responsible: Jay Boodheshwar, Director of Recreation and Special Projects, Paul Brazil, Director of Public Works
Due Date: October 1, 2010

Finding # 3: Approval of payment requests
Risk Rating Moderate

We found instances where partial billings of lump sum contracts did not use the designated form for requisitions and were not accompanied by a schedule of values. The approval of the invoice was not accompanied by documentation from a member of the Public Works department that evidenced the percentage of completion was reasonable at the date of requisition. In addition, billing requisitions for contracts noted below were processed without evidence of the Administrator's approval:

PO Number	Contract	Contractor	Final Contract Value
801356	D-8 Collection SSRP	Chaz Equipment	\$ 1,763,256
900945	Par 3 Course - Site Infrastructure	Chaz Equipment	\$ 759,879
901350	Restoration of Dunes	Applied Technology Mgt	\$ 69,000

The lack of substantive documentation as to the percentage of completion on open projects increases the likelihood that payments will be made prior to the work being performed and the Town losing leverage on the contractor should these be performance issues on the job.

Recommendation

For projects that are determined to be “major” lump sum contracts (as defined by Procedure 1-02-07), all requisitions for payment from vendors should be submitted on an American Institute of Architects Contract document that is supported by a schedule of values which agrees to the initial contract with any additions/reductions for approved change orders. Each line item should be scheduled documenting the percentage of completion and documentation of approval from the contract administrator should be included on a copy of the schedule of values and maintained in the contract file. A policy requiring the administrator’s signed approval on billing requisitions should be implemented and enforced.

Management Response/Action Plan

1. All requests for payment on future contracts will use the American Institute of Architect (AIA) document (or similar document providing same features), supported by a schedule of values which correlates to the initial contract with any additions/reductions for approved change orders. Each line item will be checked by the project manager and verified for completion of work and delivery of materials. Copies supporting the completion of work will be maintained in the project file. Additionally, invoices will be verified and approved by the Consulting Engineer and/or Architect and approved by appropriate Town personnel.

Individual(s) Responsible: Paul Brazil, Director of Public Works and Lynda Venne, Purchasing Agent
Due Date: December 1, 2010

2. A standardized payment request document will be developed for consultants that details work completed and that agrees with the Professional Services Agreement and the Project Proposal upon which the Scope of Work was based. Invoices will be verified and approved by the Town Project Manager and approved by appropriate Town personnel. Lump sum invoices will only be utilized for smaller and less complex projects, and all invoices will be supported by verification that the invoice is accurate.

Individual(s) Responsible: Paul Brazil, Director of Public Works and Lynda Venne, Purchasing Agent
Due Date: December 1, 2010

Finding # 4: Written Status Reports for Major Construction Projects
Risk Rating: Moderate

The Construction Policy requires that “the Director of Public Works shall take all those steps necessary to ensure that a written status report on each major Town construction project is provided to the Town Manager not less than once a month”. The Director of Public Works should have an established schedule to ensure that all written status reports shall be issued during each month. Through our inquiry and review of project files, we were unable to determine if written status reports were being completed as required by the Construction Policy. The absences of appropriate documentation supporting the monitoring of jobs increases the risk that the jobs are not sufficiently monitored and reduces the opportunity to instigate problems as they occur on jobs.

Recommendation

The Construction Policy should be followed on all major projects with regard to reporting by the Director of Public Works and enforced by the Town Manager. It is imperative that the status reports be in writing and be included in the project file as supporting documentation.

Management Response/Action Plan

1. As per the Town’s Construction Policy, written status reports on each Town construction project will be provided to the Town Manager in a standard format. The status report will provide an overview of all the projects and their current status, including budget status. The status reports will include appropriate documentation for the Town Manager to determine that projects are sufficiently monitored and any issues are resolved satisfactorily. Supporting documents for each project will be maintained in the individual projects files.

Individual(s) Responsible: Paul Brazil, Director of Public Works
Due Date: October 1, 2010.

Finding # 5: Controls over the receipt of Supplies and Materials
Risk Rating: Moderate

Through inquiry of the Purchasing Agent, we determined that there were insufficient internal controls for the receipt of supplies and inventory into the warehouse.

Recommendation

We suggest that the Town use formal receiving reports, such as a copy of the purchase order to document the receipt of goods. Receiving personnel should be instructed to count the goods received and compare the total received to the total per the delivery tickets to verify the quantities received. Any shortages or rejections of supplies or materials should be reported to the Purchasing Agent.

Additionally, the Town should implement a receiving log to document all goods received on a daily basis. Lack of documentation identifying the party who acknowledged receipt represents a fraud risk of loss.

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Construction Project Bidding and Contract Administration**

Management Response/Action Plan

1. The warehouse located in the Public Works facility is managed by the Purchasing Department and uses a formal computerized receiving report in the Eden software system. Packing slips are scanned as additional proof of receipt. However, this receiving function is not being used town wide. The Purchasing Division will work with Finance and Information Systems to implement this process for all departments throughout the Town so that verification of the goods and quantities received follows a consistent formal documented and verifiable process. Appropriate training will be provided to staff prior to Town-wide implementation.

Individual(s) Responsible: Jane Struder, Director of Finance, and Lynda Venne, Purchasing Agent
Spencer Wilson, Information Systems Manager
Due Date: February 1, 2011

Finding # 6: Approval of change orders

Risk Rating: Moderate

Change orders for projects noted below were approved but there appeared to be a lack of sufficient detail as to work to be performed and the pricing of the change order.

PO Number	Contract	Contractor	Initial Value	Final Value
900945	Par 3 Course - Site Infrastructure	Chaz Equipment	\$ 498,737	\$ 759,879
900925	Par 3 Course Renovation	QGS Development	\$ 2,819,974	\$ 2,936,799

Recommendation

Contract records should be designed to facilitate detailed comparisons of actual to estimated costs. Change orders, along with other records, should provide for the classification and summarization of costs into appropriate categories such as materials, subcontract charges, labor, equipment and overhead. Town policy should provide for review and approval of such documents prior to commencing work or submitting a requisition for payment. Review of such reports serves to identify potential problems on contracts; the overall reasonableness of the work performed to date and help minimize the potential that unauthorized costs will be charged to contracts.

Management Response/Action Plan

1. A procedure is currently being developed and will be implemented to provide a process for review of the change order requests from the contractor. A Request for Information (RFI) will be submitted to the design engineer/architect and once this information has been received, proposals will be obtained from the contractor/subcontractor and evaluated by the consultant and appropriate Town personnel to verify pricing is in line with current industry pricing.

The change order request will be completed using the AIA (or similar form) and will detail the materials, subcontract charges, labor, equipment and overhead. A review of the proposed work will be completed by the engineering consultants and Town personnel to identify any potential problems and the reasonableness of the work performed, which will minimize the potential that unauthorized costs will be

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charged to the Town. As identified in Finding # 7, the change orders shall identify engineering, construction and or manufacturing problems that could possibly be charged back to another party, where applicable.

Individual(s) Responsible: Jay Boodheshwar, Director of Recreation and Special Projects and Lynda Venne, Purchasing Agent
Due Date: January 1, 2011

2. No work will be authorized until all appropriate approvals have been obtained and a formal change order issued with approval from the Town Manager (Eden approval process). Any emergency work that must be completed expeditiously will follow the procedures set forth in the Purchasing Manual and will be identified as such.

Individual(s) Responsible: Paul Brazil, Director of Public Works and Lynda Venne, Purchasing Agent
Due Date: Completed

3. Staff will continue to pursue alternative delivery mechanisms, such as Construction Manager at Risk or Design-build, which will address change orders in a more controlled and timely manner, through contingency use directives.

Individual(s) Responsible: Paul Brazil, Director of Public Works and Lynda Venne, Purchasing Agent
Due Date: Ongoing

Finding # 7: Individual Project Files
Risk Rating: Moderate

For several of our sample projects sampled, we were unable to obtain the following documentation that should be maintained in each individual project file:

- That the competitive bidding was properly executed in accordance with policy;
- Fair price estimates were determined prior to bid openings;
- Contracts were administered by qualified engineers;
- Projects were monitored to ensure compliance with specifications and budgets;
- Site visits were performed as required;
- Process used to track and resolve problems and violations;
- Approval of change orders prior to processing;
- Administrator's approval of the billing requisition;
- Change order work descriptions identifying engineering, construction, and or manufacturing problems that should be back charged to another party, where applicable.

The causes of the problem appeared to be:

- Lack of a clearly specified system for filing records;
- Failure of those who removed records from the files indicating who took the record;
- Failure to return the record to the files or misfiling it when returned;
- Lack of specific policies for removing prior year records from the files when transferring to a designated storage space.

This condition could also present problems when documents are needed in support of other reports subject to audit by regulators, auditors, other governmental agencies or support for any potential litigation.

Recommendation:

We recommend that the following:

- Implement a systematic manner of filing documents to store the information consecutively by number, vendor, or alphabetically. The Town should implement a project "checklist" that should be included in each project file. A responsible member of Public Works should ensure that all appropriate documentation required is included in project files. This member of the Public Works department should sign off that they have reviewed all documentation and that the file is complete and accurate.
- Institute use of "sign-out" cards to be used when documents are removed. The card should be placed in the file in place of the removed document.
- Establish a policy specifying which records should be retained permanently and which records should be kept only for a specified period before being destroyed, where appropriate.

Management Response/Action Plan

1. All bid files are maintained in Purchasing and filed numerically by the Bid/RFP Number. The purchase orders are available electronically in the Eden program and include change orders and supporting documentation. Hard copies of the purchase orders are also maintained in Purchasing filed numerically by purchase order number. Hard copies of the purchase orders and change orders are sent to the using Department/Division for their files and the electronic copies can be viewed on line as well.

Individual Project files are maintained in Public Works, and are in the process of being expanded to provide documentation as recommended in the report and listed below:

- Plans and Specifications
- Copies of the Bid Document and contractor response(s)
- Engineering progress reports
- Project management status reports
- Documentation of conferences with project engineers and independent architects
- Copies of all correspondence relating to the project
- Complete cost records, including copies of invoices
- Change orders with supporting documents and revised plans

Construction projects are filed alphabetically by project name. Staff has established a redundant electronic file for the same data (files and sub files by category) on the Public Works' common server.

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Project check lists will be used. Staff has obtained samples from both the public and private sectors. Staff will develop one composite checklist and use it for all future projects. A staff member will be assigned the task of reviewing the check lists and files on a regular basis. Sign out cards in the file area and training will take place to insure they are used consistently. The administrative staff will be responsible for pulling the files and re-filing to maintain the integrity of the files. The Town has a records retention policy that is based on Florida State statute and Public Works is compliant.

Including the information above each project file will also provide documentation of the following:

- Competitive bidding was properly executed in accordance with policy.
- Fair price estimates were determined prior to bid openings.
- Contracts were administered by qualified engineers
- Projects were monitored to ensure compliance with specifications and budgets
- Site visits were performed as required
- Process used to track and resolve problems and violations
- Approval of change orders prior to processing
- Administrator's approval of the billing requisition/invoice
- Change order work descriptions identifying engineering, construction and or manufacturing problems that should be charged to another party, where applicable

Individual(s) Responsible: Paul Brazil, Director of Public Works and Lynda Venne, Purchasing Agent
Due Date: October 1, 2010

Finding # 8: Objectivity of Vendor Selection Committees

Risk Rating: Best practice

The composition of the subcontractor selection committee consisted of employees from the same department and lacked representation from other departments that were fundamental to the construction process. In addition, several employees had direct supervisor/subordinate positions outside of their committee roles which may limit the objectivity of the process.

Recommendation

Policies and procedures should be established so that committees are formed from a diverse group of peers independent of each others normal work functions. To the extent possible, committees should have representation from members in key departments such as Purchasing and Finance.

Management Response/Action Plan

1. Staff concurs that representation on past selection committees was not as diverse as it could have been, with limited involvement from Town departments other than those who were needing the services of the selected contractor (this was usually, but not always, the Public Works Department). During the past few years, staff has shifted to a practice that includes a broader cross-section of Town departments and expertise in the development of selection committees. Also, per Town Council's direction, we have begun including representatives of applicable Town advisory boards/commission on selection committees, further broadening the perspective of each applicable committee. These practices have proven to be very successful. We believe they have resulted in better outcomes in the selection process for consultants and contractors. A written policy will be developed to formalize this practice, requiring that membership of selection committees to be diverse, both as to background/experience/expertise and as to areas of authority/responsibility.

Individual(s) Responsible: Jay Boodheshwar, Director of Recreation and Special Projects

Due Date: November 1, 2010

Finding # 9: Major Construction Projects

Risk Rating: Best practice

We noted that from the Construction Policy that a "major construction project" shall be determined by the Town Manager after consultation with Director of Public Works. If a project is deemed "major", the project is subject to a number of additional policies and procedures which require compliance.

Recommendation

At present, the definition of a major project is based on qualitative measures and may contain an element of subjectivity. We recommend that the Construction Policy be amended to include a quantitative threshold (i.e. all projects exceeding \$100,000) to remove the element of subjectivity from this determination.

Management Response/Action Plan

1. The Town Manager will establish a clear and objective definition for what constitutes a "major construction project" in the Town.

Individual(s) Responsible: Peter Elwell, Town Manager, Paul Brazil, Director of Public Works, and Lynda Venne, Purchasing Agent

Due Date: October 1, 2010

Note: Although this was not specifically recommended by the auditors, staff will review Administrative Procedure #1-02-7 ("Construction Contracts and Project Management Procedures") in its entirety and will make all necessary revisions to reflect (1) improved procedures implemented in response to the specific audit comments addressed herein, (2) other improved procedures set forth in the updated Purchasing Manual, and (3) any other changes necessary to ensure that all obsolete sections are deleted and that all remaining sections accurately reflect the improved procedures and practices being implemented by the Town.

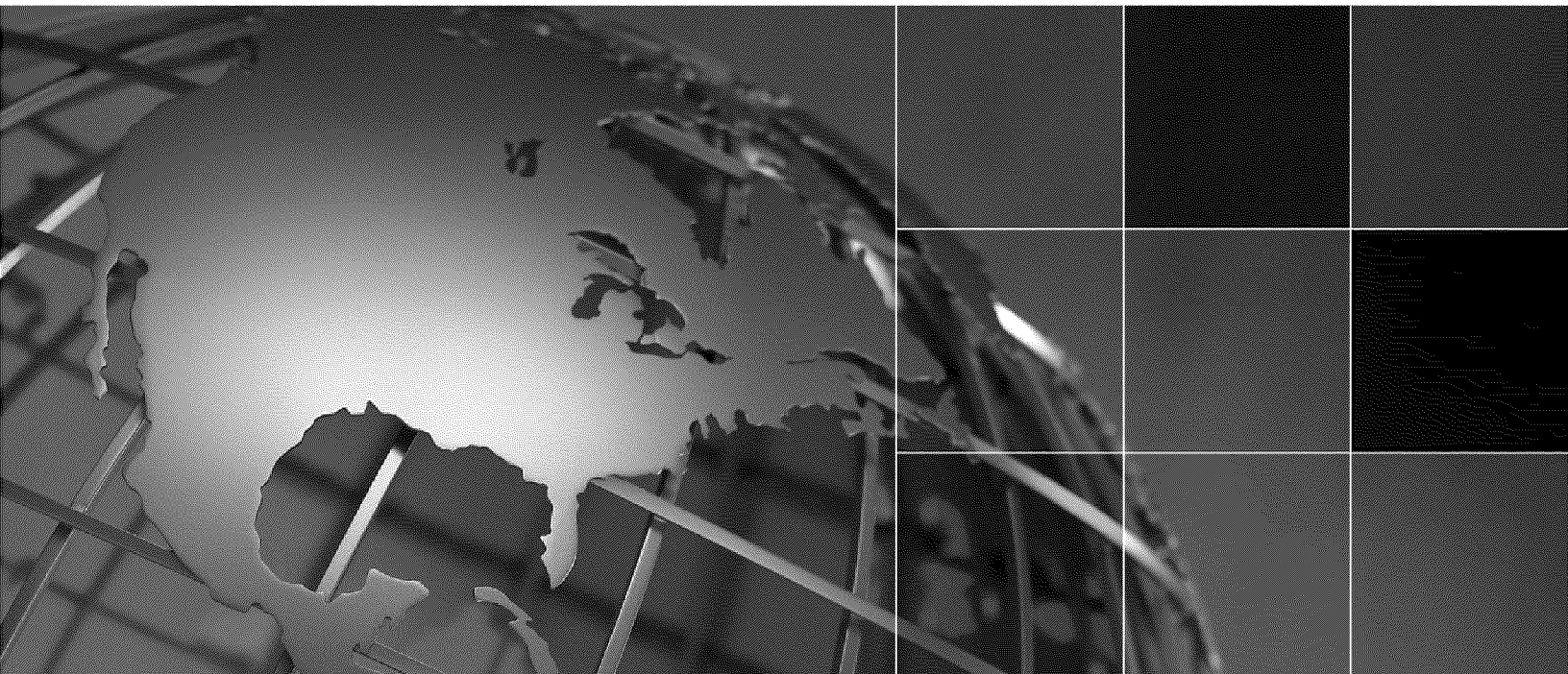
Individual(s) Responsible: Jay Boodheshwar, Director of Recreation and Special Projects

Due Date: March 1, 2010

III. Summary of Scope

The specific procedures performed were based on the concepts of selective testing. Although our testing was performed in some areas without exception, we can provide no assurance that exceptions would not have been detected had procedures been changed or expanded.

It should also be recognized that internal controls are designed to provide reasonable, but not absolute, assurance that errors and irregularities will not occur, and that procedures are performed in accordance with management's intentions. There are inherent limitations that should be recognized in considering the potential effectiveness of any system of internal controls. In the performance of most control procedures, errors can result from misunderstanding of instructions, mistakes in judgment, carelessness, or other factors. Internal control procedures can be circumvented intentionally by management with respect to the execution and recording of transactions, or with respect to the estimates and judgments required in the processing of data. Controls may become ineffective due to newly identified business or technology exposures. Further, the projection of any evaluation of internal control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, and that the degree of compliance with procedures may deteriorate.



Town of Palm Beach

Internal Audit Report Construction in Process Accounting July 2010

Town of Palm Beach

Internal Audit Report Construction in Process Accounting

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I. Executive Summary

Crowe Horwath LLP (Crowe) performed an internal audit of the Town's accounting function for a sample of construction projects from a time period spanning October 1, 2008 to March 31, 2010. The overall objective was to review the controls over the accounting for construction and capital projects for the time period identified. We reviewed selected policies and procedures with the Town's personnel, and in some instances tested certain detailed records and technical configurations.

REPORTING METHODOLOGY

In this report, we provide a summary of our results and recommendations as well as management's responses. To assist you in analyzing our recommendations, we have provided our suggestions for corrective action based on the finding's exposure to loss or increased regulatory scrutiny, as follows:

High – Requires *immediate* remedy and, if left uncorrected, exposes the Town to significant or immediate risk of loss, asset misappropriation, data compromise or interruption, fines and penalties, or increased regulatory scrutiny.

Moderate – Requires *timely* remedy and, if left uncorrected, may expose the Town to risk of loss or misappropriation of company assets, compromise of data, fines and penalties, or increased regulatory scrutiny. These issues should be resolved in a timely manner, but after any high priority issues.

Low – Should be addressed as time and resources permit. While it is not considered to represent significant or immediate risk, repeated oversights without corrective action or compensating controls could lead to increased exposure or scrutiny.

Best Practice – Represents operational efficiencies or improvements for consideration by management based on industry best practices and Crowe's experiences.

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Internal Audit Report
Construction in Process Accounting**

SUMMARY OF RESULTS

The table below displays the number of recommendations identified through our procedures, categorized by priority.

Risk Rating	Total
High	1
Moderate	1
Low	1
Total	3

Best Practice	3
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Detailed observations and recommendations are provided in Section II – Results and Recommendations. The most significant issues identified during our assessment include the following:

- **Review of Construction in Process Accounts**
- **Capital Project Accounting Policies and Procedures**
- **Accounting for Infrastructure Capital Assets**

In addition to the items summarized above, other items are also documented in Section II that do not represent significant risk at this time, but offer opportunities for the Town to further strengthen controls and processes.

Thank you for this opportunity to report the results of our procedures. We also wish to thank the various Town personnel for their cooperation and assistance.

II. Results and Recommendations

Below are the results and recommendation of our procedures performed.

Finding # 1: Review of Construction in Process Accounts
Risk Rating: High

We noted that a "Capital Improvement Program" is approved by the Town Council on an annual basis. The Program is broken down into several areas such as Storm Water, Sanitary etc. Although individual projects are allocated by separate line items, there are also program line items that are for "general improvements". It should be noted that if additional significant projects are identified, there may be transfers from the "General" line item to the specific project (this is done by the approval of the Director of Public Works after going through the required approvals).

As of September 30, 2009, there was \$2,649,947 and \$2,121,279 capitalized for sewer and drainage general improvements, respectively. Per discussion with the Assistant Finance Director, the Finance Department is unaware of the composition of the items that currently comprise the detail in the construction in progress accounts as to whether they should be expensed or capitalized. The rationale for this per inquiry appears to be that the Finance Department may not have sufficient resources available to enable these accounts to be fully analyzed and reconciled to the detail required on a periodic basis.

The risks of including the general improvement accounts under CIP expenditures are as follows:

- Expenditures that are not significant enough to meet the Town's definition of a capital asset are being capitalized, as opposed to being expensed as incurred.
- There could be multiple smaller projects included in the general improvements that would make individual tracking of each difficult. As a result, it would be difficult to determine when the asset is placed into service and should be transferred to capital assets and depreciated
- The Town is potentially overstating assets by a significant amount.

Recommendation

We recommend that the Town perform the following:

- Prior to the end of the Town's financial year, the Finance department should perform an analysis of each general ledger account related to CIP, specifically the general improvement general ledger (GL) accounts. The analysis needs to include all expenditures incurred dating back to capitalization start date, along with details of which project the expense relates to and when the capital asset (if applicable) was or is intended to be placed into service. If the expenditure was not determined to be a capital asset, this should be identified to be expensed. This analysis needs to be performed in conjunction with a member of the Public Works Department.
- Once the analysis is completed, the Town should consider the materiality of the items that should have been previously expensed or that should have been placed into service and depreciated and the impact that these items have on previously issued audited financial statements.
- In the future, we recommend that GL accounts should not be used that are general in nature. If expenditures are related to specific projects, a separate GL account code should be used. Alternatively, a supplemental schedule that reconciles the individual transactions processed through

the general account should be performed quarterly and on an annual basis the appropriate adjustments should be made based on review between the Finance Department and the Director of Public Works.

Management's Action Plan

The Finance Department has begun the process of analyzing the sewer and drainage general ledger accounts. A spreadsheet detailing each purchase order and invoice that ties to the expenditures in each account is being prepared and will be reviewed with a representative from the Public Works Department to determine which items need to be capitalized. After the analysis of the two general accounts is complete, the remaining line items will be analyzed to determine capitalization levels. This process will be completed for incorporation in the FY2010 financials. The vacant position in the Finance Department has been authorized to assist with this ongoing reconciliation process.

General Ledger accounts that are general in nature will not be used in the future. As each bid award is approved by Town Council, new projects will be established with budget transfers from the general line items to a specific project. A supplemental schedule that reconciles the individual transactions processed through each account will be performed on a quarterly basis starting with the quarter ended December 31, 2010.

Individual(s) Responsible: Jane Struder, Finance Director, Paul Brazil, Public Works Director
Due Date: December 31, 2010

Finding # 2: Capital Project Accounting Policies and Procedures
Risk Rating: Moderate

We noted that there is currently no formal written accounting policy and procedure related to Capital Project Accounting. We were provided with a draft document that describes the current practice for Capital Project Accounting, however this was an informational document that was drafted to provide us with additional insight that would assist us with our procedures.

In addition, there were no periodic reconciliations performed on capital project general ledger accounts and no identified process owners or specified reviewers.

Recommendation

We recommend that the Town finalize the Capital Project Accounting Policy and Procedures, which should include the following:

- Specify the process and other employees responsible for the process and related internal controls.
- In addition to identifying the related processes, documenting the key controls that reduce the risk of material misstatement. For example, in the draft that was provided, one process that was identified was "A determination is made prior to establishing account numbers, as to whether the project is to be capitalized/depreciated or expensed as supplies maintenance". This process should be supported by a key control, such as "Prior to the creation of project account number, the Assistant Finance Director or designee and Public Works Project Manager will review each project phase in accordance

with the Town's Capital Asset Policy to determine if that phase of the project should be capitalized or expensed. This process shall be documented and signed off as approved by the Finance Director.

- The policy should specify the development and use of a "Capital Project Request Form" in conjunction with the annual budget development process and for inclusion in the budget document. An example of this form was provided by the Finance Department but was not currently being utilized on any project. The purpose of this form is to enhance the information flow between the Finance Department and other departments within the Town.

Management's Action Plan

A Capital Project Accounting Procedure will be drafted by Finance, reviewed by the Public Works Director and approved by the Town Manager. The procedure will identify related processes and document the key controls that reduce the risk of material misstatement. Two forms will be developed as a part of this procedure. The first form will be prepared during the annual budget process and will be included in the Town's budget document. The second form will be prepared when projects are submitted to the Town Council for approval to identify the project budget including contingency, phases as they relate to accounting for acquisitions, disposals and depreciation for infrastructure accounting.

Individual(s) Responsible: Jane Struder, Finance Director, Paul Brazil, Public Works Director
Due Date: October 1, 2010

Finding # 3: Accounting for Infrastructure Capital Assets
Risk Rating Low

We noted that all infrastructure assets are maintained in excel and depreciation is recorded to the General Ledger based on this schedule.

The schedule is prepared annually by the Assistant Finance Director and is not reviewed or approved by any other employee. Upon obtaining the schedule for infrastructure assets, we also noted the following:

- Asset additions under each major category of infrastructure are added under one item (i.e. "2009 Additions") as opposed to individual projects. As a result, future disposals are not able to be accurately determined in terms of carrying value.
- On an annual basis, the Assistant Director of Finance obtains a listing of the current year disposals from the (former) Assistant Director of Public Works. The disposals are based the Director's estimates and are calculated based on the materials used during the current year additions (i.e. quantity and current price). Once the total disposals have been calculated, there will be a reduction in cost and accumulated depreciation for the same amount. Due to the significant lives on the various classes of infrastructure, it is unlikely that the assets would be fully depreciated, although due to this treatment all disposals are treated as if they had no carrying value.
- There is no depreciation calculated on current year additions due to the date during the year that assets are placed into service (one time per year at September 30).

Recommendation

We recommend that the Town perform the following going forward:

- Separate schedules are maintained for each component of infrastructure that reconciles back to the total additions for the year. Each separate schedule should break down the total additions into separate smaller projects.
- Disposals for each year are calculated based on the actual cost and accumulated depreciation through the month of disposal. A loss on disposal should be recorded on disposed assets with a residual carrying value.
- Additions should be depreciated from the date placed into service. The analysis of when a fixed asset is placed into service should be identified as opposed to one date each year.

Management's Action Plan

The Finance Department will be researching the best method to track infrastructure activity. Additional training will be scheduled during November 2010 on the Project Accounting Module for the Town's current financial software to determine if the module will provide the required infrastructure information. In addition, Finance will survey area municipalities and work with the Town's current annual auditors as a part of the evaluation process. Our goal is to establish a cost effective method of achieving the objectives stated in Crowe's recommendation above. The procedural improvements in response to this finding will be implemented by September 30, 2011.

Individual(s) Responsible: Paul Brazil, Public Works Director; Jane Struder, Finance Director and Cheryl A. Somers, Asst. Finance Director
Due Date: September 30, 2011

Finding # 4: Employee Access Rights to Eden Modules
Risk Rating: Best practice

We tested the various employee access rights to the Eden modules on a sample basis. Although it appeared that the majority of access rights were appropriate for the employee's job responsibilities, there were instances where exceptions were noted. For example, an Accounting Clerk (Linda Jones) has access to the Accounts Receivable module in Eden, even though it appeared that Accounts Receivable is not part of her job profile.

Recommendation

Management should complete a full review of user access for all members of the Finance group and employees should be provided access to those modules that are appropriate for their job responsibilities. For instances where some employees need access to other modules for cross-training or cross-cover purposes, this should be documented as to the reason for the access provided.

Management's Action Plan

Each year on an annual basis, the Office of Information Systems runs a report of user access to all of the Eden Systems and provides this report to the Finance Director. The Director reviews the report, makes any necessary changes, and responds to the Information Systems Manager regarding any actions that need to be taken. This is part of the existing Information Systems Technologies Policy. When it is completed again this year (and in future years) as part of the Town's annual audit, the Finance Director will include in her review specific consideration of Crowe's concerns as stated in this finding and recommendation.

Individual(s) Responsible: Spencer D. Wilson, Information Systems Manager, and Jane Struder, Finance Director

Due Date: September 30, 2010

Finding # 5: Information Systems Security Policy

Risk Rating: Best Practice

We noted that the Information Systems Security Policy was first implemented in January 1993 and was last revised on September 30, 2005. It has been almost five years since the policy has been updated, and the Town has been through a major systems conversion to Eden during this period.

Recommendation

Management should consider reviewing the Security Policy to determine if the Policy needs to be revised and updated.

Management's Action Plan

During the summer of 2010, the Office of Information Systems updated the existing Information Systems Security Policy as well as several other policies. All of these policies have been combined into a single Information Systems Technologies Policy which was completed on July 30, 2010. This new all inclusive policy covers all aspects of work, procedures and security within the Office of Information Systems. This new policy will be updated annually to make sure the policy keeps pace with the changes in technology as well as other changes within the Town.

Individual(s) Responsible: Spencer D. Wilson, Information Systems Manager

Due Date: Completed July 30, 2010

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Finding # 6: Information Systems Utilization and Communication
Risk Rating Best Practice

From discussions with members of the Finance Department, we noted the following issues:

- The project accounting module of the Eden accounting system was not being reconciled to the general ledger and the full capacity of the project accounting module was not being effectively utilized.
- There were concerns expressed that the Finance Department was not being as efficient as possible in the processing of transactions, especially items such as processing purchase orders with multiple budget line items.
- The period end closing procedures appeared to be delayed through a lack of coordination and communication with the various departments involved. The general ledger has remained left open for a significant amount of time so that all invoices could be included in the correct fiscal year to ensure that fund balances are correctly rolled over.

Recommendation

We recommend the following:

- Employees of the Finance and Public Works departments should consider engaging the services of Eden consultants for guidance and additional training on the system's capabilities. The consultant would first determine how the system is currently being used and determine what efficiencies can be gained, especially by the use of the project accounting module. It is imperative that both departments be involved in the training to ensure that both departments are aware of what each department requires from the accounting system and how best to achieve the desired results.
- The period end closing procedures should be reviewed to determine the point at which communication between various departments needs to take place, the process owners and the controls that are in place to ensure that deadlines are met. Specifically related to obtaining invoices in a timely fashion, at year end the Public Works department should review a listing of open purchase orders and from this list, contact vendors to ensure that invoices are going to be received in a timely fashion to ensure that the period end closing of the general ledger can be achieved in an efficient manner.

Management's Action Plan

EDEN has been contacted regarding additional training on the project accounting module which is tentatively scheduled for November 2010. Employees involved in accounting for capital projects in the Public Works and Finance Departments will be trained on the system's capabilities.

Open purchase orders as of July 2010 have been reviewed by each Department and many balances have been liquidated. In mid-September an additional updated schedule of open purchase orders will be provided to the Departments to determine the status of purchase orders and if invoices need to be provided by vendors for services rendered.

Individual(s) Responsible: Jane Struder, Finance Director, and Paul Brazil, Public Works Director
Due Date: November 30, 2010

III. Summary of Scope

The specific procedures performed were based on the concepts of selective testing. Although our testing was performed in some areas without exception, we can provide no assurance that exceptions would not have been detected had procedures been changed or expanded.

It should also be recognized that internal controls are designed to provide reasonable, but not absolute, assurance that errors and irregularities will not occur, and that procedures are performed in accordance with management's intentions. There are inherent limitations that should be recognized in considering the potential effectiveness of any system of internal controls. In the performance of most control procedures, errors can result from misunderstanding of instructions, mistakes in judgment, carelessness, or other factors. Internal control procedures can be circumvented intentionally by management with respect to the execution and recording of transactions, or with respect to the estimates and judgments required in the processing of data. Controls may become ineffective due to newly identified business or technology exposures. Further, the projection of any evaluation of internal control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, and that the degree of compliance with procedures may deteriorate.

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

RESOLUTION NO. 96-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Proposed Liability, Property, Workers' Compensation, Automobile, Loss Fund Insurance Coverages and other Insurance Coverages incidental to the Town's operations for FY2011; Approving the Proposed Preferred Governmental Claims Solutions Claims Management Services Fee; Approving the Insurance Agent Services Agreement with Wells Fargo Insurance Services and Authorizing the Town Manager to Execute the Agreement on Behalf of the Town.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated September 3, 2010, from Karen Temme, Risk Manager
- Premium Comparison
- Insurance Company Ratings
- Resolution No. 96-10
- Insurance Agent Service Agreement

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

Via: Thomas G. Bradford, Deputy Town Manager

From: Karen Temme, ARM, Risk Manager

Re: Liability, Property, Workers' Compensation, Automobile Insurance Coverages and
Claims Management Services for FY2011
Resolution No. 96-10

Date: September 3, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the insurance program as outlined in this memorandum and authorize the Town Manager to execute the necessary documents. Based upon Town staff recommendations as outlined in this memorandum, the total fixed costs for the October 1, 2010 insurance renewal including premiums, claims management and agent commission are offered for an annual premium of \$970,337 with an estimated variable cost of \$780,000 for a total of \$1,750,337.

The risk budget for FY11 has sufficient funding to cover the Town's recommended insurance renewal for October 1, 2010 and other insurance coverages which renew throughout the fiscal year. The FY11 budget for fixed costs and variable costs is \$1,815,001.

Staff also recommends that the Town Council approve Resolution No. 96-10 for the Liability, Property, Workers' Compensation, Automobile Loss Fund, Claims Management Services and the Insurance Agent Services Agreement.

GENERAL INFORMATION

For the FY2010 insurance renewal, PGIT, the Town's insurance program offered a 2 year rate guarantee quotation. The Town Council approved the 2 year rate guarantee offer at the September 10, 2009 Town Council meeting. Please refer to attachment "A", which provides the description of coverage and premiums for the insurance program. The PGIT program provides a structured program with various "A" rated insurance carriers. Please refer to attachment "B" for a list of the insurance company ratings.

The Preferred Government Insurance Trust (PGIT) is a multi-line insurance trust, created by Florida statutes, offering a full range of casualty, property and workers compensation products and services to Florida's public entities. PGIT commenced operations in 1999 and now insures in excess of 700 municipalities, counties, school boards and special taxing districts.

PGIT enjoys an extremely conservative excess of loss structure and as of 9/30/2009, had approximately \$90 million in annualized premiums, \$140 million in assets and \$53 million in member's equity (surplus). The trust totally transfers to the "A" rated insurance marketplace the catastrophic exposure of windstorm and retains no more than \$100,000 per occurrence on all other lines.

PGIT can provide a number of risk financing options including guaranteed cost, deductible and self-insured retention options. Some new services include on-line claims access and safety training available at no cost to members and an educational alliance created with the Florida Police Chief's Association.

The program is administered by Public Risk Underwriters of Florida, based in Lake Mary. They provide marketing, underwriting, safety and risk management, policy administration, accounting, state filings, and excess of loss placements.

The Town's insurance program is a hybrid program, as it includes insurance that is first dollar traditional coverage and coverages that are self-insured. Remaining partially self-insured provides the Town with much more flexibility and input to decision-making for those lines of insurance that are self-insured. One year ago, for the FY2010 renewal, the Town received quotations on traditional first dollar coverage to compare to the current hybrid self-insurance program. The self-insurance program was less expensive. In addition, last year the Town was able to secure a 2 year rate guarantee that enabled the Town to only have a 1% increase in PGIT program premium, which resulted from the increased value of Town Hall. The current hybrid model employed by the Town provides maximum flexibility to adjust to market conditions and save money where possible.

A self insurance program is an alternative risk financing method whereby an exposure to loss is retained by the Town under the self insured retention (SIR). An SIR is the amount that the Town self-insures beneath the excess coverage, which is not to be confused with a deductible. With an SIR, the insured has control over the claims management and loss control.

The Town purchases excess insurance coverage above the SIR. The insurance premium savings over the traditional/first dollar program allows the Town to keep the premium dollars in house in order to reserve funds to cover future potential losses. The required reserve fund amounts are calculated using actuarial models and insurance information. The Town conducts an actuarial study every other year for the self insurance program.

Coverages purchased as traditional/first dollar:

Property

Property insurance coverage is purchased as a traditional/first dollar policy. The property insurance covers the Town's buildings and contents for fire, theft, wind, and flood. An appraisal of the Town's property was conducted in October 2008 by AssetWorks Appraisal. The PGIT program has included this service in the insurance program at no additional cost. The Town's building and content values for FY11 have been increased to \$43,195,301 from \$41,195,301 based upon a \$2,000,000 increase for the insured value for Town Hall. The increase in value will result in an additional premium of \$21,800. The FY11 budget includes funding to cover the additional premium.

The property coverage premium is \$434,011 with a \$5,000 per occurrence deductible and a minimum of \$20,000 damage for a named storm. There remains a separate 5% deductible per insured location and per occurrence for any named windstorm. The PGIT program structure does not allow for the deductible to be greater than \$25,000 per occurrence. The program does include a \$5,000,000 limit of liability for flood coverage which is in excess of the National Flood Insurance Program (NFIP) policies. The NFIP policies are purchased directly through American Bankers Ins. Co. of FL. NFIP policies are estimated to be \$37,857 in FY11. This coverage was not part of the 2 year rate guarantee. These funds have been included in the FY11 budget, but this coverage is not part of this renewal. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services/Preferred Governmental Insurance Trust

Premium:	\$434,011
Deductible:	\$5,000 / (5% per insured location for "Named" Windstorm)
Limit of Liability:	\$43,195,301

Inland Marine

Inland Marine is a type of property insurance that provides coverage for items which are unique in nature and change frequently. The Inland Marine coverage includes \$50,000 for communication equipment, \$295,145 contractor's/mobile equipment, \$1,292,000 electronic data equipment, \$250,000 emergency services portable equipment, \$150,000 rented, borrowed, leased equipment, fine arts \$350,000 and \$250,000 valuable papers with a limit of liability of \$2,637,145 with a \$25,000 per occurrence deductible at an annual premium of \$10,477. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Preferred Governmental Insurance Trust

Premium:	\$10,477
Deductible:	\$25,000
Limit of Liability:	\$2,637,145

Boiler and Machinery

Boiler and Machinery is for equipment breakdown which is not covered under the property or inland marine coverages. The Boiler and Machinery coverage includes equipment within the Town's Water Resources Division such as storm water and sewer pumps, generators and air conditioning equipment as outlined in the Town's equipment schedule.

Travelers Insurance Company has offered Boiler and Machinery coverage at an annual premium of \$3,745 with a \$5,000 per occurrence deductible. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Travelers

Premium: \$3,745
Deductible: \$5,000
Limit of Liability: \$43,195,301

Commercial Crime/Employee Dishonesty

Crime and Employee Dishonesty protects employers from actions of employees that may cause harm as a result of Forgery and Alteration, Theft, Disappearance, Destruction Inside/Outside, Computer Fraud and Money Orders/Counterfeit Currency and Faithful Performance. RLI, Chartis, Great America and Travelers declined to provide a written quote for coverage based upon the Town's current crime claim. The Town is currently with Travelers for the commercial crime coverage. United State Fire Insurance Co. is the only company that has provided a written quotation offering commercial crime coverage at an annual premium of \$12,832 with a \$1,000,000 limit of liability and \$100,000 deductible. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /United States Fire Insurance Co.

Premium: \$12,832
Deductible: \$100,000
Limit of Liability: \$1,000,000

Storage Tank Pollution Liability

Storage Tank Pollution Liability responds to claims and associated litigation from above and below ground storage tanks that cause spills/leaks, bodily injury or property damage. ACE USA has provided the Town with a quote to insure 13 underground tanks and 12 above ground tanks at an annual premium of \$12,446 with a \$1,000,000 aggregate limit of liability for legal defense expenses and \$2,000,000 aggregate limit of liability for storage tank incidents for both above and underground storage tanks with a \$25,000 deductible. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /ACE USA

Premium: \$12,446
Deductible: \$25,000
Limit of Liability: \$1,000,000

Coverages purchased as a self insurance program:

General Liability

General Liability insurance is premises, operations liability coverage, products, completed operations and personal injury coverage. PGIT is offering the General Liability coverage as expiring at an annual premium of \$62,426 with a limit of liability of \$5,000,000 per occurrence and \$10,000,000 aggregate with a \$100,000/\$200,000 per occurrence self insured retention. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Preferred Governmental Insurance Trust

Premium: \$62,426
SIR: \$100,000/\$200,000
Limit of Liability: \$5,000,000/\$10,000,000

Law Enforcement Liability

Law Enforcement Liability insurance protects against the inherent risks associated with the operation of a law enforcement agency. PGIT is offering the Law Enforcement Liability coverage which includes false arrest, detention or imprisonment, malicious prosecution, etc. as expiring at an annual premium of \$46,148 with a limit of liability of \$5,000,000 per occurrence/\$5,000,000 aggregate with a \$100,000 per occurrence self insured retention. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Preferred Governmental Insurance Trust

Premium: \$46,148
SIR: \$100,000
Limit of Liability: \$5,000,000

Public Officials Liability

Public Official Liability insurance provides elected officials protection for actions that may be deemed as wrongful or for failure to perform while acting in an official capacity. PGIT is offering the Public Officials Liability coverage at an annual premium of \$34,745 with a limit of liability of \$5,000,000 per occurrence/\$5,000,000 aggregate with a \$100,000 per occurrence self insured retention. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Preferred Governmental Insurance Trust

Premium: \$34,745
SIR: \$100,000
Limit of Liability: \$5,000,000

Employment Practices Liability

Employment Practices Liability insurance provides protection for the insured employer against claims by employees, former employees or prospective employees resulting from negligent acts or omissions involving hiring, firing, EEOC, retaliation, discrimination, etc. PGIT is offering the Employment Practices Liability coverage as expiring at an annual premium of \$23,164 with a limit of liability of \$5,000,000 per occurrence/\$5,000,000 aggregate with a \$100,000 per

occurrence self insured retention. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Preferred Governmental Insurance Trust

Premium: \$23,164
SIR: \$100,000
Limit of Liability: \$5,000,000

Automobile Liability

Automobile Liability insurance is for claims involving bodily injury or property damage as a result of an accident involving licensed vehicles which are owned, leased or hired by the Town. PGIT is offering the Automobile Liability coverage as expiring at an annual premium of \$64,317 with a \$5,000,000 limit of liability and a \$100,000/\$200,000 per occurrence self insured retention. Automobile Physical Damage provides collision protection to the licensed vehicles in the event of an accident. Physical Damage coverage is offered at an annual premium of \$32,238 with a \$10,000 deductible per occurrence. Vehicles valued under \$100,000 are covered for actual cash value and vehicles valued over \$100,000 are covered for an agreed value. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Preferred Governmental Insurance Trust

Liability Premium: \$64,317
SIR: \$100,000/\$200,000
Limit of Liability: \$5,000,000
Physical Damage Premium: \$32,238
Deductible: \$10,000

Workers' Compensation and Employer's Liability

Workers' Compensation is statutorily required and provides protection to employees and volunteers while performing duties within the course and scope of their assigned duties pursuant to Florida State Statue 440. PGIT is offering excess Workers' Compensation coverage as expiring with statutory limits and a \$350,000 self insured retention. Employer's Liability is considered coverage B under a Workers' Compensation policy and applies to liability that may be imposed on an employer outside the provisions of the Workers' Compensation law. The Employer's Liability coverage is offered with a \$1,000,000 limit of liability per occurrence and \$350,000 self insured retention. The Workers' Compensation and Employer's Liability coverage is offered at an annual premium of \$105,730. There is also an annual assessment from the State of Florida estimated at \$20,188 for self insurance. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /Preferred Governmental Insurance Trust

Premium: \$105,730
Assessment to State: \$20,188
Total Costs: \$125,918
SIR: \$350,000
Limit of Liability: Statutory

Stop Loss

The stop loss coverage provides the Town with an assurance that a maximum of \$780,000 in losses via deductibles or a SIR will not be exceeded for the policy period. Town losses that can be attributed to this stop loss figure include coverage under property (excluding wind/hailstorm and flood), inland marine, general liability, law enforcement liability, auto liability, public official's liability, employment practices liability and excess workers' compensation. The wind storm deductible is not included with the stop loss and has a 5% deductible per insured location for each named storm and must meet the minimum of \$20,000 in total damages. The annual stop loss premium was reduced from \$9,000 to \$5,400 based upon the Town's loss history. It is recommended that this coverage and associated cost be approved.

Wells Fargo Insurance Services /PGIT

Premium: \$5,400
Deductible: \$0 (zero)
Stop Loss: \$780,000

Insurance Agent Commission

The insurance agent is entitled to a reasonable and customary commission for securing the proposed the insurance coverages and for other work pursuant to the proposed Insurance Agent Service Agreement. The flat rate base commission for FY11 is \$70,000 for all lines of coverages placed by Wells Fargo Insurance Services for current and new policies throughout the policy period of 10/01/10 – 09/30/11. Staff is recommending that Town Council approve Resolution No. 96-10 that will memorialize the expectations that the Town has of the recommended insurance agent. The Insurance Services Agreement is Exhibit "A" to the resolution. It is recommended that the insurance agent commission and resolution be approved. The Town Attorney has approved both documents for legal form and sufficiency.

Wells Fargo Insurance Services

Insurance Agent Commission: \$70,000

Claims Management Services/PGCS

Preferred Governmental Claims Solutions (PGCS) has been providing the Town with claims management services for all lines of coverage since 2004. PGCS works strictly for governmental agencies, therefore having the knowledge and expertise in handling sovereign immunity, police professional, EMS, public official's and employment practices liability claims. The annual fee for these third party administrator (TPA) services is the same as the fee charged for the current fiscal year. It is recommended that the TPA services with PGCS be approved.

Preferred Governmental Claims Solutions

TPA Fee: \$32,470

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed and approved both the resolution and Insurance Services Agreement for legal form and sufficiency for the FY10 renewal.

Attachments

**INSURANCE PREMIUMS
FY10 Actual vs FY11 Proposed**

Attachment "A"

Coverage Type	Actual FY10	Proposed FY11	Percent Rate of Change for FY10 vs. FY11
Property *	\$412,211	\$434,011	5%
Inland Marine	\$10,477	\$10,477	0%
General Liability	\$62,426	\$62,426	0%
Law Enforcement Liability	\$46,148	\$46,148	0%
Automobile Liability	\$64,317	\$64,317	0%
Automobile Physical Damage	\$32,238	\$32,238	0%
Public Officials	\$34,745	\$34,745	0%
Employment Practices	\$23,164	\$23,164	0%
Workers' Compensation Excess Premium	\$105,730	\$105,730	0%
Workers' Compensation State Assessment	\$20,188	\$20,188	0%
Boiler & Machinery	\$3,745	\$3,745	0%
Claim Management	\$32,470	\$32,470	0%
Stop Loss Protection	\$9,000	\$5,400	-40%
Insurance Agent Commission flat fee	\$70,000	\$70,000	0%
Sub-Total Fixed Costs	\$926,859	\$945,059	2%
Self Insurance Loss Fund	\$780,000	\$780,000	0%
Sub-total Fixed & Loss Fund Costs for 10/1/10 Renewal	\$1,706,859	\$1,725,059	1%

*Property premium increase is based upon the \$2M increase in value to Town Hall

COVERAGES RENEWING ON 10/1/10, BUT NOT PART OF THE 2 YEAR RATE GUARANTEE

Coverage Type	Actual FY10	Proposed FY11	Percent Rate of Change for FY10 vs. FY11
Commercial Crime	\$4,528	\$12,832	183%
Storage Tank Liability	\$15,469	\$12,446	(20%)

COVERAGES NOT PART OF THE OCTOBER 1, 2010 RENEWAL

Coverage Type	Actual FY10	Estimated FY11	Percent Rate of Change for FY10 vs. FY11
NFIP Flood Insurance	\$34,415	\$37,857	10%
Marine Hull & Liability	\$5,873	\$6,772	15%

FIXED AND VARIABLE COST TOTALS

Est. Maximum Fixed & Variable costs	\$1,767,144	1,794,966	2%
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INSURANCE COMPANY RATINGS

Provided for your information are the ratings for the carriers participating in the proposed insurance package based upon the Best's Key Rating Guide.

The Best's Guide is used by the insurance industry to determine the financial stability of an insurance company. It is also the most recognized rating company in the insurance industry. The alphabetical listing indicates the company's financial strength, operating performance and market profile with A++ and A+ being Superior, A and A- being Excellent. The numerical listing indicates the financial size categories based on reserve funds with 15 being the highest.

Wells Fargo Insurance Services/PGIT

Carrier	A.M. Best Rating	Coverage Provided
ACE USA	A+ XV	Storage Tank Liability
Allied World Assurance Company (AWAC)	A XV	Property
American Bankers Insurance Co	A XIII	Flood
Illinois National Insurance Co	A XV	Public Officials Liability
Arch Specialty	A XV	Property
Aspen	A XV	Property
Aspen	A- VIII	Property
AXIS	A XV	Property
Commonwealth	A IX	Property
Endurance	A XV	Property
Glacier Re	A- IX	Property
Indian Harbor Insurance Company	A XV	Law Enforcement Liability
Ironshore	A- XI	Property
Lancashire Re	A- XII	Property
Lexington	A XV	Property
Liberty Mutual	A XV	Workers' Compensation
Lloyds	A+ XV	Property
Max Re	A- XII	Property
Montpelier	A- XIV	Property
RSUI	A XII	Property
Travelers	A+ XV	Boiler & Machinery
Star Insurance	A- IX	Auto, Gen Liab, W/C
Swiss Re	A XV	Property
United States Fire Insurance Co.	A XIV	Crime

RESOLUTION NO. 96-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE PROPOSED LIABILITY, PROPERTY, WORKERS' COMPENSATION, AUTOMOBILE, LOSS FUND INSURANCE COVERAGES AND OTHER INSURANCE COVERAGES INCIDENTAL TO THE TOWN'S OPERATIONS FOR FY2011; APPROVING THE PROPOSED PREFERRED GOVERNMENTAL CLAIMS SOLUTIONS CLAIMS MANAGEMENT SERVICES FEE; APPROVING THE INSURANCE AGENT SERVICES AGREEMENT WITH WELLS FARGO INSURANCE SERVICES AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN.

WHEREAS, staff has recommended renewal of the proposed Liability, Property, Workers' Compensation, Automobile, Loss Fund and other insurance coverages incidental to the Town's operations, including a proposal for claims management services and insurance agent services agreement to memorialize the expectations of the Town relative to services to be provided by the Town's insurance agent of record.

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

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

Section 2: The proposed Liability, Property, Workers' Compensation, Automobile, Loss Fund and other insurance coverages incidental to the Town's operations for FY2011 as recommended by Town staff as part of the FY2011 insurance renewal proposal are hereby approved.

Section 3: The insurance services agreement attached hereto as Exhibit "A" and incorporated by reference as a part of this resolution is hereby approved and the Town Manager is authorized to execute the agreement on behalf of the Town.

**PASSED AND ADOPTED IN REGULAR, ADJOURNED SESSION OF THE
TOWN COUNCIL OF THE TOWN OF PALM BEACH ASSEMBLED THIS 14th DAY
OF SEPTEMBER 2010.**

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Council President Pro Tem

William J. Diamond, Town Council Member

Richard M. Kleid, Town Council Member

ATTEST:

Robert N. Wildrick, Town Council Member

Joanna Cunningham, Town Clerk

**INSURANCE AGENT SERVICES AGREEMENT
Resolution No. 96-10**

This agreement ("Agreement"), entered into this ____th day of September, 2010, by and between Wells Fargo Insurance Services, a Florida corporation, hereinafter "Insurance Agent" or "Agent", with offices located at 2054 Vista Parkway, Suite 400, West Palm Beach, FL 33411 and the Town of Palm Beach, a Florida municipal corporation ("Town"), with offices located at 360 South County Road, Palm Beach, FL 33480.

WHEREAS, Wells Fargo Insurance Services, Inc is to provide insurance for the Town for its annual insurance renewal to be effective October 1, 2010.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and value of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1

Incorporation by Reference

1. The terms and conditions of the Town's Request for Proposal for Property/Liability/Workers' Compensation/Excess Insurance RFP No. 2008-24, RFQ No. 2008-20 and Insurance Agent's insurance proposal provided to the Town are hereby incorporated into this Agreement. In the event of any inconsistency in interpreting this Agreement, RFP No 2008-24, RFQ No. 2008-20, and Insurance Agent's insurance proposal provided to the Town, the Town's interpretation shall prevail.

Article 2

Insurance Agent's Specific Obligations

2. Insurance Agent will provide the insurance agent services in conjunction with the insurance policy or policies provided by Insurance Agent in accordance with the insurance agent requirements set forth in this Agreement. Breach of these requirements shall be considered a breach of this Agreement.

- a. Insurance Agent will coordinate with Town staff to assure that up-to-date exposure data is incorporated into issuance of newly purchased policies.
- b. Insurance Agent will assure that the policies issued reflect no lesser policy terms, conditions, coverage amounts and options than were accepted by the Town.
- c. Insurance Agent will immediately correct policy deficiencies before delivery to the Town.
- d. Insurance Agent will promptly deliver the policies to the Town within 30 days of policy inception. If any deficiencies from the accepted proposal remain, Insurance Agent will provide a timeline for their resolution to the satisfaction of the Town.
- e. Insurance Agent will promptly and accurately process insurance policy endorsements and other change requests as needed.
- f. Within 30 days of policy inception Insurance Agent will specify to the Risk Manager the loss control/safety services available from the insurers whose policies were purchased through the agent and thereafter coordinate loss control/safety services desired by the Town that are available from the insurers whose policies were purchased through the agent when required.
- g. In a timely manner, Insurance Agent will assist the Town in filing claims with insurers from whom the Town has purchased policies through the agent.
- h. Insurance Agent will be available for risk management meetings with the Town and for meetings with the Town Council, as desired by the Town during the year.
- i. Insurance Agent will issue Certificates of Insurance, within forty-eight (48) hours of receipt of a request for the same from the Town.

- j. Insurance Agent will monitor, and in a timely manner, notify the Town of major developments regarding the insurance industry or the Town's insurers or policies that may affect the Town.
- k. Insurance Agent will respond to coverage or other insurance policy questions as may be presented by the Town within twenty-four (24) hours.
- l. At mutually agreeable dates and times to be initiated by Insurance Agent, but not less than annually, Insurance Agent will review with Town staff the premium/coverage of the Town for the policies purchased.
- m. Insurance Agent will provide the Town's Risk Manager, within 120 to 150 days prior to renewals, estimates of renewal changes in premium, coverage, policy terms, listing of all markets approached and the market response, etc. Insurance Agent will coordinate with the Town in the collection of needed renewal rating and background information.
- n. Insurance Agent will present renewal pricing and policy changes to the Town not less than 100 days before renewal. If unable to meet this requirement Insurance Agent shall provide a written explanation to the Town sufficient to enable the Town to corroborate the agent's explanation. Only valid reasons beyond Insurance Agent's control shall be deemed acceptable to the Town.
- o. Not less than 100 days before renewal, proposals for additional insurance markets assigned to Insurance Agent by the Town for which there are no conflicts with other qualified agents of the Town shall be obtained, and provided to the Town with a listing of all companies contacted, detail spreadsheets of all proposals received and all rejection letters, if any.
- p. Insurance Agent will provide final, written renewal proposals to the Town at least 45 days prior to October 1, in time for staff to prepare and present the insurance renewal to the Town Council at its regularly scheduled September monthly meeting.

- q. If the Town conducts an RFP process for coverages provided, Insurance Agent will promptly provide necessary background and rating data, and premium/claims history information desired for the RFP.
- r. Insurance Agent will cooperate with the Town in developing a fair reduction of the contracted agent/broker remuneration in the event the Town exercises the option to solicit competition for one or more types of insurance outside the agent of record contract.
- s. Insurance Agent will deliver renewal policies timely, within 30 days of binding coverage.
- t. Insurance Agent will fully disclose insurance policy premiums and commissions or other remuneration received for the sale of such policies.
- u. Insurance Agent will permit the Town to conduct an audit of all remuneration/revenues attributable to the Town's account and to fully cooperate with persons designated by the Town to perform such audit.
- v. Insurance Agent will provide to the Risk Manager a Stewardship report by April 1, 2011. The report shall include a broker self evaluation for broker service, execution of policies, marketing program, claim review meetings, loss control and the insurance renewal process. The Stewardship report should include past, current and future strategies to include, but not limited to, cost cutting, updating exposure schedules, changes in laws that affect the insurance program. A mutual date and time will be scheduled by Wells Fargo Insurance Services, Inc. to review the Stewardship report with the Risk Manager.

Article 3

Town's Obligations

- 3. The Town will compensate Insurance Agent in accordance with the agreed upon amount of remuneration for the insurance services to be provided. Insurance Agent compensation shall be made in a timely manner.

Article 4

Financial

4. Insurance Agent shall be compensated by the Town in accordance with the Insurance Agent's RFP 2008-24 submittal, as amended by negotiations with the Town, if any.
 - (a) Insurance Agent may invoice the Town for agreed upon services in accordance with applicable terms and conditions agreed upon by the parties, but only when renewal binders have been delivered to the Town.
 - (b) Insurance Agent shall be compensated by the Town in the amount of \$70,000 per year guaranteed through September 30, 2012, and including current and new policies purchased throughout the contract period.
 - (c) Insurance Agent will provide a ninety (90) day written notice prior to October 1, 2012 of any increase in commission or flat rate commission so the Town may properly consider renewal of the Agreement pursuant to section 6(a).

Article 5

Insurance

5. Insurance Agent shall provide the following insurance:
 - (a) Errors and Omissions insurance with a limit of liability of \$100,000,000 per occurrence.
 - (b) Insurance agent shall provide the Town with a Certificate of Insurance evidencing the above requested coverage prior to providing any services on behalf of the Town. Insurance coverage required shall be in force throughout the Agreement term. Should Insurance Agent fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written notice at any time during the term of the Agreement, the Town shall have the right to consider the Agreement breached and shall have the right to immediately terminate the Agreement.
 - (c) No changes to these insurance amounts may be made without a written amendment to this Agreement.

Article 6

Term and Termination

6. The term of this Agreement shall be from the date of execution through September 30, 2011.
- (a) This Agreement may be renewed by the Town for additional one-year terms. Any renewal must be in writing and executed by the parties.
- (b) This Agreement may be terminated for cause under the following circumstances. If either party fails to carry out and comply with any of the covenants, conditions, and agreements to be performed by it, then the other party may notify the non-complying party of such failure or default and demand that the same be remedied within ten (10) days. In the event of the failure to so remedy within said period, the non-defaulting party shall thereupon have the right to cancel and terminate the Agreement immediately upon delivery of written notice to the other party. Should a party receive a second notice of failure or default, such party shall have no right of remedy and the Agreement shall terminate upon written notice to the defaulting party.

Article 7

Miscellaneous

7. Notice – All notices shall be in writing and sent by registered or certified mail addressed as follows:

Insurance Agent:

Sam Ellington
Managing Director
Wells Fargo Insurance Services
2054 Vista Parkway, Suite 400
West Palm Beach, FL 33411

Town of Palm Beach:

Karen Temme, ARM
Risk Manager
360 South County Road
Palm Beach, FL 33480

Copy to:

Thomas G. Bradford
Deputy Town Manager
360 South County Road
Palm Beach, FL 33480

- (a) Successors and Assigns – The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Agreement cannot be assigned by either party without the prior written consent of the other, not to be reasonably withheld.
- (b) Force Majeure – If, because of Acts of God, strikes or other labor disputes, vendor delays, or other unavoidable cause, either party is unable to perform its obligations hereunder, such non-performance shall not be considered a breach of the Agreement.
- (c) Equal Opportunity Employer – Insurance Agent affirms that it is an Equal Opportunity Employer and will comply with all laws and regulations prohibiting employment discrimination in the performance of the Agreement.
- (d) The failure of either party to insist upon or enforce any term or provision or to exercise any right, option, or remedy of the Agreement, or to require at any time performance of any provision hereof, shall not be construed as a waiver of any such term or provision. No waiver by either party of any term or provision hereof shall be binding unless made in writing and signed by such party.
- (e) If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect.
- (f) This document, along with the documents incorporated into the Agreement in Paragraph 1.1, together with all insurance documents required hereby, and any other materials required under the bid documents shall constitute the entire Agreement. This Agreement may not be changed other than by agreement in writing signed by the parties.

- (g) In the event an action is brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its legal fees and court costs, through all appeals, in addition to any other remedies it may be entitled to under this Agreement or otherwise under the law.
- (h) Nothing contained herein shall be deemed or construed to create any rights to any member of the public or any third party whatsoever.
- (i) Independent Contractor – Insurance Agent shall at all times be deemed to be an independent contractor and nothing in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture as between the Town and Insurance Agent.
- (j) Governing Law – This Agreement shall be governed by the laws of the State of Florida and venue shall lie in Palm Beach County, Florida.
- (k) Interpretation – This Agreement shall be administered on behalf of the Town by the Town’s Risk Manager or his/her designee. As used herein, the word “Town” shall refer to the Risk Manager or his/her designee unless otherwise noted or unless the context renders such construction illogical.

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

Witness:

Insurance Agent

Title

Corporate Seal

TOWN OF PALM BEACH

ATTEST:

Joanna Cunningham, Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

RESOLUTION NO. 107-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Pursue a Special Category Grant from the Florida Department of State, Division of Historical Resources for the Restoration of Addison Mizner's Memorial Fountain, Subject to Prior Approval by the Town Attorney of the Grant Agreement for Legal Form and Sufficiency.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated September 1, 2010, from John Page
- Resolution No. 107-10
- Town of Palm Beach Grant Approval Form

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Resolution Authorizing the Town Manager to Pursue a Special Category Grant from the Florida Department of State, Division of Historical Resources, for the Restoration of Addison Mizner's Memorial Fountain
Resolution No. 107-10

Date: September 1, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council adopt Resolution No. 107-10 authorizing the Town Manager to pursue a Special Category Grant from the State's Division of Historical Resources, including submittal of all documents associated therewith, for the purpose of renovating Addison Mizner's Memorial Fountain.

Note: The opportunity to apply for this grant presented itself unexpectedly. Such grants are normally due May 31st of each year. The State recently consolidated two grant cycles, resulting in a new, amended deadline of August 31st of each year. Staff learned of this change early in the month of August (too late to place the item before the Council that month). The pressing nature of this funding opportunity prompted staff to complete and transmit an application for funding in accordance with the deadline. Council approval to submit, therefore, is being requested after-the-fact. Should the Council oppose this action for any reason, staff will notify the state that we withdraw the request from further consideration.

GENERAL INFORMATION

Built in 1929, using a design by Addison Mizner, Memorial Park was paid for by donations from the resort's winter residents and dedicated to the Town in 1930, during the midst of the Great Depression. It was a civic project of the highest order, based on the Town's first Comprehensive Plan which was sponsored by the Garden Club of Palm Beach, and since its dedication has remained a centerpiece of the locally designated Town Hall Square Historic District.

In the eighty years since the Memorial Park and Fountain were constructed, repairs have been made as needed. The Public Works Department continues to budget for routine upkeep of the fountain each year, but no funding has been programmed for a full restoration. In 1991, the Town of Palm Beach received a Small Matching Grant from the Department of State, Division of Historical Resources to patch the cast stone and repair the mechanical systems of the fountain. Recent evaluations by architects Marsh, Bridges & Associates and contractor Hedrick Builders confirmed the need for a “full restoration and rehabilitation due to the severe deterioration found in the cast stone flatwork, cast stone features and elements.” Landscaping in the Park is not an allowable item in this grant; any improvements to landscaping will have to be treated as a separate Town project. The Special Category grant herein is limited to the Addison Mizner fountain (the Park’s centerpiece), the associated cast stone work throughout the Park, and the equipment and plumbing that keeps the fountain and reflecting pool operating.

The entire application, over 40 pages in length, is available in the Planning, Zoning & Building Department for personal inspection if so desired. The enclosed “Town of Palm Beach Grant Approval Form” identifying the project particulars and anticipated funding sources has been approved by the Deputy Town Manager and the Finance Director.

FUNDING/FISCAL IMPACT

The cost of the fountain restoration and related improvements as described above is estimated to be \$614,080. Our application requests that \$350,000 in funding be awarded (the permissible State cap). Should the entire award be approved, the local match will equal \$264,080. As such, our local match meets and exceeds the grant requirement that at least ½ of the State award be funded by the applicant. It is anticipated that Town funding will be provided from the General Fund Contingency account, if necessary. Several community organizations have shown interest in this project and it is conceivable, though no commitments have been made, that private donation(s) may be obtained to fulfill the Town’s local match.

All submitted projects will be reviewed in Tallahassee in November of this year. Those projects that are approved will receive funding in July of 2011.

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed and approved Resolution No. 107-10 for legal form and sufficiency.

Attachment

cc: Department Directors
John C. Randolph, Town Attorney
John Lindgren, Town Planning Administrator
Jane Day, Landmark Consultant

RESOLUTION NO. 107-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO PURSUE A SPECIAL CATEGORY GRANT FROM THE FLORIDA DEPARTMENT OF STATE, DIVISION OF HISTORICAL RESOURCES FOR THE RESTORATION OF ADDISON MIZNER'S MEMORIAL FOUNTAIN, SUBJECT TO PRIOR APPROVAL BY THE TOWN ATTORNEY OF THE GRANT AGREEMENT FOR LEGAL FORM AND SUFFICIENCY.

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

The Town Manager is hereby authorized to pursue a Special Category Grant from the Florida Department of State, Division of Historical Resources for the Restoration of Addison Mizner's Memorial Fountain. This authorization is subject to the Town Attorney's prior approval of the Grant Agreement for legal form and sufficiency.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 14th day of September, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH GRANT APPROVAL FORM

Department Submitting Application:

Planning, Zoning & Building

Project Title: Special Category Grant for the Restoration of Addison Mizner's Memorial Fountain

Description of Project:

Full restoration of Memorial Fountain, including repair & replacement (where needed) of cast stone, plumbing and other equipment.

Describe additional resources required to support grant:

Grant application (completed by landmark preservation consultant) detailing history and need, and financial match from the Town (at least 1/2 of the State award).

Describe additional resources required for continued support of completed project:

Annual maintenance & cleaning by Town's Public Works Department will be needed. After completion of project, less time and money is anticipated for annual maintenance/cleaning.

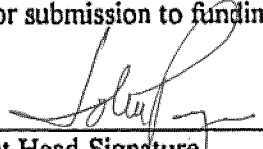
Describe indirect cost reimbursement guidelines:

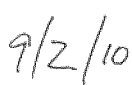
Indirect cost reimbursements will be necessary for some of the work done to prepare the grant (mostly from the reproduction costs of the original 1930 plans for the fountain, which were purchased from the Historical Society of Palm Beach County); however, the cost of writing and submitting the grant has already been paid for from the existing budget for the landmarks preservation consultant.

FUNDING	AGENCY/FUNDING SOURCE	AMOUNT
FEDERAL		\$
STATE	Special Category Grant	\$ 350,000
TOWN	General Fund Contingency Account	\$ 264,080
OTHER		\$
TOTAL		\$ 614,080

Deadline for submission to funding agency:

August 31, 2010


Department Head Signature


Date

REVIEW/APPROVAL

Comments:

Contingency funds should be available
if donations are not secured. A budget
amendment could also be used if necessary.

Jane Stude

Finance Director

9/2/10

Date

Comments:

To the best of my knowledge, nothing precludes
the Town Council match from Contingency being
augmented with donations on Town funds coming
from another Town source.

Thomas P. Bradford

Assistant Town Manager

9/2/10

Date

**TOWN OF PALM BEACH
CERTIFICATION OF FUNDS**

Department Submitting Application: Planning, Zoning & Building

Project Title: Special Category Grant for the Restoration of Addison Mizner's Memorial Fountain

PROPOSED FUNDING:

Grant	\$ 350,000
Other Sources	\$
Town Cash Match	\$ 264,080
TOTAL	\$ 614,080

Funding available for cash match:

YES X NO

If yes, Funding Source: General Fund Contingency Account

John Page
Department Head/Designee

Jane Stender
Finance Director

9/2/10
Date

9/2/10
Date

GRANT APPLICATION CHECKLIST

ORIGINATING DEPARTMENT:

PZB

DEPARTMENT CONTACT:

John Lindgren

☒ Completed Grant Application

☒ Completed Grant Approval Form

☐ Draft Resolution (if required)

☐ Certificate of Funds (if required)

☐ Review by Finance Department

☐ Review by Assistant Town Manager

☐ Town Manager \ Town Council Approval

After grant has been awarded to Town, forward executed original grant agreement to Town Clerk's office with copies to the Assistant Town Manager and Finance Department.

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 24-10 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 at Subdivision IV, Section 82-111, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

William Hanes, Pension Administrator

Supporting Documents

- Ordinance No. 24-10

ORDINANCE NO. 24-10

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 AT SUBDIVISION IV, SECTION 82-111, TERM OF OFFICE, TO PROVIDE FOR STAGGERED TERMS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of Trustees of the Police Officer Pension has recommended amending the retirement system to improve efficiency and to retain experienced trustees; and

WHEREAS, the actuary for the retirement system has certified that there is no actuarial impact to this ordinance.

THEREFORE, 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 82, Personnel, Subdivision IV, Police Officers, Section 82-111(a), to read as follows:

Sec 82-111. Term of Office; oath of office; vacancy.

- (a) The regular term of office of member-elected trustees of the police officer board and appointed trustees shall be two years and they may succeed themselves in office. Terms of office shall be staggered to provide for the selection once every year of one elected trustee and one appointed trustee.

Section 2. Application of new staggered terms of office.

The new staggered election cycle shall take effect beginning at the next election. One elected trustee and one appointed trustee shall be randomly selected by lot at a public meeting to serve an initial term of one year. Thereafter, all trustees shall serve regular two year terms.

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 the 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 replaced.

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 on the date of passage upon second and final reading unless otherwise provided herein.

PASSED AND ADOPTED in a regular, adjourned session on the first reading this 10th day of August 2010, and for a second and final reading on this 14th day of September, 2010.

Jack McDonald, Mayor

David A. Rosow, Council President

Gail Coniglio, President Pro Tem

William J. Diamond, Council Member

Richard M. Kleid, Council Member

ATTEST:

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 25-10 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 at Subdivision III, Firefighters, Section 82-91, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

William Hanes, Pension Administrator

Supporting Documents

- Ordinance No. 25-10

ORDINANCE NO. 25-10

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 AT SUBDIVISION III, FIREFIGHTERS, SECTION 82-91, TERM OF OFFICE, TO PROVIDE FOR STAGGERED TERMS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of Trustees of the Firefighters Board of Trustees, Town of Palm Beach Retirement System has recommended amending the retirement system to improve efficiency and to retain experienced trustees; and

WHEREAS, the actuary for the retirement system has certified that there is no actuarial impact to this ordinance; and

THEREFORE, 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 82, Personnel, Subdivision III, Firefighters, Section 82-91(a), to read as follows:

Sec. 82-91(a). Term of office; oath of office; vacancy.

The regular term of office of member-elected trustees of the firefighter board and appointed trustees shall be two years and they may succeed themselves in office. Terms of office shall be staggered to provide for the selection once every year of one elected trustee and one appointed trustee.

Section 2. Application of new staggered terms of office.

The new staggered election cycle shall take effect beginning at the next election. One elected trustee and one appointed trustee shall be randomly selected by lot at a public meeting to serve an initial term of one year. Thereafter, all trustees shall serve regular two year terms.

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 on the date of passage upon second and final reading unless otherwise provided herein.

PASSED AND ADOPTED in a regular, adjourned session on first reading this 10th day of August 2010, and for a second and final reading on this 14th day of September, 2010.

Jack McDonald, Mayor

David A. Rosow, Council President

Gail Coniglio, President Pro Tem

William J. Diamond, Council Member

Richard M. Kleid, Council Member

ATTEST:

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 27-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 18, Building and Building Regulations, Section 108.2(l) Permit Fees; Providing for State Required Building Permit Fee Surcharges; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

ORDINANCE NO. 28-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 78 Peddlers and Solicitors, Article II Peddlers, Section 78-40; and at Article III Charitable Solicitations, Sections 78-102 and 78-105, so as to Provide for an Administrative Processing Fee and Late Fees as Adopted by Resolution of the Town Council 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

- Memorandum dated August 31, 2010, from Thomas G. Bradford, Deputy Town Manager
- Ordinance No. 27-10
- Ordinance No. 28-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Review of Ordinances for First Reading Incorporating Ordinance, Rules and Standards (ORS) Committee Approved Code Changes.
Ordinance No. 27-10 and Ordinance No. 28-10

Date: August 31, 2010

STAFF RECOMMENDATION

Staff recommends Town Council approve each of the ordinances delineated below on first reading. Each ordinance change has been approved by the ORS Committee. The ordinance changes are being presented to the full Town Council in the ordinance format for the first time on the same day that you receive the ORS Committee report in order to expedite adoption of the ordinances prior to October 1, the beginning of the new fiscal year, for reasons explained below.

GENERAL INFORMATION

In the fall of 2009 the Town Council requested that the ORS Committee begin the process of reviewing the Town Code of Ordinances in a systematic fashion with regular reports to the Town Council. Thereafter, this office instructed all departments to conduct a review of those code provisions that they work with, or make any reference to their departments, for the purpose of recommending any Code changes to this office and ultimately to the ORS Committee. The first ORS Committee meeting held for the purpose of Code review was convened on December 7, 2009 and ORS has met each month except for May.

There are a total of thirty-seven (37) chapters in the Town's Code of Ordinances. Each one is being reviewed by ORS, with the exception of Chapter 134, the Zoning Ordinance, which is not being reviewed because it receives fairly constant attention by the Town Council, the Planning and Zoning Commission and staff. Many of the other thirty-six chapters have not had a thorough review since at least 1998 when Ordinance No. 17-98 adopted a new Code of Ordinances.

All chapters of the Town Code have been reviewed by ORS. However, there are a number of staff and Town Attorney follow-up items remaining for ORS consideration in

accordance with the instructions of the ORS Committee. The work is estimated to be completed this fall. In the end, each ordinance change approved by ORS is reported to the full Town Council. If the full Town Council approves, the ordinance change is presented for first reading at a Town Council meeting and is submitted in the redline format, meaning ordinance additions are underlined and ordinance deletions are shown as ~~striketroughs~~. Two such ordinances are up for first reading consideration. Each ordinance number, a synopsis of its full title and the highlights of what is being changed appears below.

- ORDINANCE NO. 27-10, Amending Chapter 18 to enable the State required surcharge of 3% of each building permit fee, of which the Town by law shall keep 10%, for funding the Homeowners' Construction Recovery Fund, the functions of the Building Code Administrators and Inspectors Fund, the participation of building departments in the national and state building code adoption processes and education related to enforcement of the Florida Building Code.

On June 1 Governor Crist signed into law HB 663. This new law entails numerous changes affecting construction-related requirements and went into effect July 1. One of the changes modified the old penny a square foot "radon" and "DCA" charge into a new surcharge of 3% of building permit fees collected, effective October 1, 2010. This is a substantial increase from previous fees, and according to new provisions in the statute, the Town is to retain 10% of the fees collected from implementation of the 3% surcharge, to cover its administrative costs for implementing these fees. These fees are intended to fund the Homeowners' Construction Recovery Fund, the functions of the Building Code Administrators and Inspectors Fund, the participation of building departments in the national and state building code adoption processes and education related to enforcement of the Florida Building Code. HB 663 is 102 pages long. If you would like to review it, please let me know. These fee increases must also be adopted by a concurrent resolution to be considered at the time of second reading of the ordinance at the September 29 Special Town Council meeting to adopt the FY 11 budget.

Since the Town is required by law to begin collecting these fees staff has adhered to the following schedule in order to commence collection on October 1 as required by law:

- August 26 – ORS review and recommendations on draft ordinance.
- September 14 – First reading of ordinance adopted by Town Council at regular monthly meeting.
- September 29 – Second reading of the ordinance at the special Town Council meeting wherein the final public hearing on the adoption of the FY 11 Town Budget will occur. Fee increases must also be adopted by a concurrent resolution at this meeting.

This is a Chapter 18 amendment. Other Chapter 18 amendments are forthcoming, but due to the time constraints, this change needs to advance separately from the other Chapter 18 amendments.

- ORDINANCE NO. 28-10 Amending Chapter 78 to provide for a peddler's permit fee and a permit fee and penalties for untimely charitable solicitation permit application submittals as determined by resolution of the Town Council.

Chapter 78-40 requires a peddler's permit for door to door solicitations in Town and the payment of a permit fee to be established by resolution. The proposed fee is \$25. This proposal is not time sensitive as are the other amendments within the ordinance discussed below. However, the proposed fee must also be adopted by a concurrent resolution to be considered at the time of second reading of the ordinance at the September 29 Special Town Council meeting to adopt the FY 11 budget.

Chapter 78-105 provides for a fee of \$460 for charitable solicitation permits. Chapter 78 also requires all applications to be submitted not less than 60 days in advance of the event. The Town Clerk reported that more than half of last year's charitable permit applications did not comply with the deadline of submitting at least 60 days in advance. Most were submitted less than 30 days before the planned event. ORS recommends that the later an application is submitted, the greater the penalty the applicant should pay because late applications cause Town staff to drop other duties to analyze and issue a permit.

The Town Clerk wishes to implement the section 78-105 change prior to the commencement of the new fiscal year which is when the rush of charitable permit applications begins to be submitted. This permit fee, which is not being increased, and the proposed new late permit filing fees must also be adopted by a concurrent resolution to be considered at the time of second reading of the ordinance at the September 29 Special Town Council meeting to adopt the FY 11 budget.

SPECIAL CONSIDERATION

Each ordinance proposed herein is being presented outside of typical Town procedure in order to enable their adoption prior to October 1, 2010. Typically, an ordinance recommended for adoption by ORS is referenced in an ORS report to the Town Council. If the ORS report is approved by the Town Council, at the next regularly scheduled Town Council meeting the ordinance is placed on the agenda for first reading. In this case, the usual one month delay between Town Council acceptance of the ORS report and appearance on a Town Council agenda for first reading is being sidestepped in order to expedite adoption prior to October 1 for the reasons stated hereinabove.

FUNDING/FISCAL IMPACT

The cost of preparing the ordinances, advertising second reading and codifying the ordinances are known direct costs of ordinance adoption. A General Fund contingency

allocation may be requested by staff prior to the end of FY 2011 to provide additional funds to the Town Clerk's budget to accomplish these tasks, the cost of which will not be known until all ordinance amendments are reviewed by ORS and approved by the Town Council.

Some of the proposed fees and/or penalties referenced in the ordinances may generate additional revenue, but the amount is not quantifiable since behavior may be adjusted to avoid penalties in some cases.

TOWN ATTORNEY REVIEW

Each ordinance has been prepared by the Town Attorney.

cc: Department Directors
John C. Randolph, Town Attorney
Veronica Close, Assistant Director of Planning, Zoning and Building
Joanna Cunningham, Town Clerk
Jeff Taylor, Building Official
Bill Bucklew, Combination Plans Examiner

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ORDINANCE NO. 27-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 18, BUILDING AND BUILDING REGULATIONS, SECTION 108.2(I), PERMIT FEES; PROVIDING FOR STATE REQUIRED BUILDING PERMIT FEE SURCHARGES; 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 18, Building and Building Regulations; Section 108.2(I), Schedule of Permit Fees, to read as follows:

“108.2 Schedule of permit fees. On all new and existing buildings, structures, plumbing, mechanical, electrical, and gas systems, site work, and swimming pools and spas, requiring a permit as set forth in section 104, and all right of way permits, a fee shall be paid based on the construction value and is required at the time of filing application in accordance with the following schedule:

- a. A minimum permit fee as established by resolution shall apply to all construction permits and right-of-way work.
- b. The permit fee for all permits for construction within the town shall be assessed in accordance with the fee schedule adopted by the Town Council by resolution. Subcontractors for all work will be required to obtain a permit and will be charged in accordance with the fee schedule above. Separate permits will be required for each separate building and a separate permit will be required for all site work (to include walkways, driveways, property walls and fences, gates, irrigation, landscaping, exterior lighting, patios, slabs, etc.). Separate permits will be required for all structures such as pools, docks and seawalls.
- c. Demolition -- Fee based on construction value, same as a. and b. above, unless condemned by the Town, then no fee will be charged.
- d. Moving a Building -- Fee based on construction value in accordance with the fee schedule adopted by the Town Council by resolution.
- e. Permit Refund Fee -- Fee shall be based upon the time required for staff processing,

plan review, inspections, etc. as determined by the building official, but in no case less than the minimum permit fee established by resolution. All requests for refunds must be received within 30 days from issuance of permit.

f. Permit transfer fee -- Fee as determined by the building official but not to exceed the amount established by resolution of the Town Council.

g. Plan examination fee -- Fee not to exceed the amount as established by resolution.

h. Major Plan rechecking fee -- Second and additional check list charge will be ten (10) percent of permit fee each time rechecked.

i. Expedited Plan Review Fee -- At the option of the contractor and with the approval of the building official, the town, at its discretion, will perform a special plan review to expedite permit applications and plan revisions. Fees will be assessed in accordance with the fee schedule adopted by the Town Council by resolution, and are based upon the current availability of personnel and the current cost for plan review services.

j. Each re-inspection failed due to wrong address, work rejected because of faulty construction, work not ready for inspection at time requested, or repairs or corrections not made at time of subsequent inspection will be assessed in accordance with the fee schedule adopted by the Town Council by resolution. Fees for re-inspection shall be paid in the town planning, zoning & building department before the re-inspection is made. No further inspections will be made or permits issued until such fees have been paid.

k. For education travel and certification maintenance for development regulation and fire prevention personnel -- one and one-half percent (1.5%) of the fees outlined in a. through j. shall be directed to a separate expenditure account specifically and solely for educational travel and certification maintenance of development regulation and fire prevention personnel.

l. ~~A surcharge of one cent per square foot of under roof floor space of new, remodeled, renovated, or added square~~ shall be collected, in accordance with Florida Statutes 468.631 and 553.721, as amended, copies of which are on file in the Department to fund the Homeowners' Construction Recovery Fund and the functions of the Building Code Administrators and Inspectors Fund. This surcharge shall be adopted by resolution of the Town Council and may be amended from time to time.

m. The sanitary sewer capital connection charge (CAP) shall be collected at the time of the issuance of the building permit according to the fee schedule adopted by the Town Council by resolution. No capital connection charge shall be assessed for a building addition, remodel, renovation or replacement of a building within twelve (12) months of its demolition, unless a larger water meter is installed. In such event, only the fee difference between the two meter sizes shall be assessed for the water service capital connection charge.

n. Tents and Other Temporary Structures. Permit Fee is assessed in accordance with the fee schedule adopted by the Town Council by resolution. In addition to the permit fee, a fee in accordance with the fee schedule adopted by the Town Council by

resolution per tent, per month (or portion thereof) will be charged for any tent standing for more than fifteen (15) days. For multiple events over a period of time, a re-inspection will be required for each event, at a fee in accordance with the fee schedule adopted by the Town Council by resolution.

o. Local Product approval. If a local product approval of a product per Department of Community Affairs Rule 9B-72 is requested, a fee in accordance with the fee schedule adopted by the Town Council by resolution will be required with the application for such local product approval.”

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 _____ day of _____, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

ORDINANCE NO. 28-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 78 PEDDLERS AND SOLICITORS, ARTICLE II PEDDLERS, SECTION 78-40; AND AT ARTICLE III, CHARITABLE SOLICITATIONS, SECTIONS 78-102 AND 78-105, SO AS TO PROVIDE FOR AN ADMINISTRATIVE PROCESSING FEE AND LATE FEES AS ADOPTED BY RESOLUTION OF THE TOWN COUNCIL; 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 78, Peddlers and Solicitors; Article II, Peddlers; Section 78-40, Permit Application Required, to read as follows:

"Sec. 78-40. Permit application required.

If any person desires a peddler's permit, he shall furnish the chief of police a sworn statement showing the following:

- (1) The name of the applicant.
- (2) The organization or organizations represented by him.
- (3) The nature of goods, wares or merchandise to be offered for sale or for which orders will be taken.
- (4) A permit application fee shall be assessed in accordance with the fee schedule adopted by the Town Council by resolution as may be amended from time to time."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 78, Peddlers and Solicitors; Article III, Charitable Solicitations; Division 2, Permit; Section 78-102, Application; subparagraph (b) to read as follows:

"(b) Each application shall be sworn to and filed with the town at the office of the town clerk at least 60 days prior to the proposed effective date of the permit applied for; ~~however, the town manager may, for good cause shown, allow the filing of an application less than 60 days prior to the effective date of the permit applied for.~~ Permits applied for less than 60 days prior to the effective date of the permit shall be subject to late fees as determined by resolution of the Town Council as may be amended from time to time."

Section 3. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 78, Peddlers and Solicitors; Article III, Charitable Solicitations; Division 2, Permit; Section 78-105, Fees to read as follows:

"Sec. 78-105. Fees.

Before a permit is issued pursuant to this article, there shall be paid to the town clerk an administrative processing fee, ~~of \$460.00 and in the event of a late filing a late filing fee, in accordance with the fee schedule adopted by the Town Council by resolution as may be amended from time to time.~~

Section 4. 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 5. 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 6. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 7. 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 14th day of September, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: September 14, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 29-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 106, Streets, Sidewalks, and Other Public Places, at Article VI, Parades, Division 2, Permit, Section 106-216, So as to Exempt the Town of Palm Beach from the Requirements Relating to Parade Permits for Parades Officially Sponsored by the Town of Palm Beach with Approval of the Town Council; Providing an Amendment to Article VII, Special Events on Public Property, Division 2, Permit, Section 106-281, Exempting the Town from Requirements for Permitting and Regulations Relating to Special Events; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

John C. Randolph, Town Attorney

Supporting Documents

- Memorandum dated September 2, 2010, from John Randolph
- Ordinance No. 29-10
- Chapter 106, Article VI, Parades
- Chapter 106, Article VII, Special Events on Public Property
- Revocable Permit Application for a Parade

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 14, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John C. Randolph, Town Attorney

Re: Parade Permits
Ordinance No. 29-10

Date: September 2, 2010

STAFF RECOMMENDATION

Town staff recommends that Chapter 106, Article VI, of the Town Code of Ordinances relating to parade permits be amended by the adoption of Ordinance No. 29-10 so as to provide that parades sponsored by the Town of Palm Beach and approved by Town Council shall not be required to obtain a parade permit or be otherwise restricted by the regulations set forth in that division. A similar provision will be applied to special events.

GENERAL INFORMATION

There has been discussion in regard to the Town's upcoming Centennial Celebration and the possibility of the Town sponsoring a parade as part of the celebration. Chapter 106, Article VI, of the Town Code of Ordinances relating to parades, a copy of which is attached hereto, describes the regulations, the process for filing for permit, the standards for issuance and the parade routes which are allowed. The parade routes are confined to Royal Palm Way and Royal Poinciana. The police department has put together an application for filing for a parade permit, a copy of which is attached hereto.

In the event the Town Council wishes to exempt the Town, itself, from the requirement of obtaining a parade permit and the regulations relating to a parade, particularly the restrictions relating to the parade route, the Town Council should give consideration to the adoption of Ordinance No. 29-10 which provides an exemption from the requirement for a parade permit and from related regulations for parades officially sponsored by the Town and approved by the Town Council.

While considering such an amendment, the Town Council may also wish to consider an amendment to Article VII, relating to special events on public property. The proposed ordinance provides an exemption for the Town from permits and regulations relating to both parades and special events.

ORDINANCE NO. 29-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 106, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, AT ARTICLE VI, PARADES, DIVISION 2, PERMIT, SECTION 106-216, SO AS TO EXEMPT THE TOWN OF PALM BEACH FROM THE REQUIREMENTS RELATING TO PARADE PERMITS FOR PARADES OFFICIALLY SPONSORED BY THE TOWN OF PALM BEACH WITH APPROVAL OF THE TOWN COUNCIL; PROVIDING AN AMENDMENT TO ARTICLE VII, SPECIAL EVENTS ON PUBLIC PROPERTY, DIVISION 2, PERMIT, SECTION 106-281, EXEMPTING THE TOWN FROM REQUIREMENTS FOR PERMITTING AND REGULATIONS RELATING TO SPECIAL EVENTS; 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 106, Streets, Sidewalks and Other Public Places, at Article VI, Parades; Division 2, Permit; Section 106-216, to read as follows:

"Sec. 106-216. Required.

No person shall engage in, participate in, aid, form or start any parade unless a parade permit shall have been obtained from the chief of police. No permit shall be required for parades officially sponsored by the Town of Palm Beach government and approved by the Town Council, nor shall the regulations set forth in this Division 2 apply to such parades."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 106, Streets, Sidewalks and Other Public Places, at Article VII, Special Events on Public Property, Division 2, Permit; Section 106-281, to read as follows:

"Sec. 106-281. Required.

No person shall engage in, participate in, aid, form or start any special event unless a special event permit shall have first been obtained from the town manager or his designee. No permit shall be required for special events officially sponsored by the Town of Palm Beach government and approved by the Town Council, nor shall the regulations set forth in this Division 2 apply to such special events."

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 14th day of September, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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ARTICLE VI. PARADES*

DIVISION 1. GENERALLY

Sec. 106-191. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police means the chief of police of the town.

Parade means any march or procession (except funeral processions) of any kind within the town, in or upon any street used for vehicular traffic, that does not comply with normal and usual traffic regulations and controls.

Parade permit means a permit as required by this article.

(Code 1982, § 19-52)

Cross reference—Definitions generally, § 1-2

Sec. 106-192. Public conduct during parades.

(a) *Interference.* No person shall unreasonably hamper, obstruct, impede, or interfere with any parade or parade assembly or with any person in a parade.

(b) *Driving through parades.* No driver of a vehicle shall drive between persons comprising a parade when such persons are in motion and are conspicuously designated as a parade.

(c) *Parking on parade route.* The chief of police shall have the authority, when reasonably necessary to prohibit or restrict the parking of vehicles along a highway or part thereof constituting a part of the route of a parade. The chief of police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.

(d) *Objects readily wielded as a weapon.*

- (1) The carrying by any person of any object that might readily be wielded as a weapon is prohibited within 300 yards of any parade. Such objects shall include but not be limited to, any pole or stick or greater

than three-quarters inch in diameter, object with sharpened edges or points, dirk, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, sword, sword cane, firearm, or electric weapon or device.

- (2) The carrying or possession by any person of any object constructed of any object that standing alone would be in violation of this article is prohibited within 300 yards of any parade.

(Code 1982, § 19-62)

Sec. 106-193. Penalties.

Any person determined to be in violation of the provisions of this article, not relating to revocation of the permit, shall be subject to section 1-14. (Code 1982, § 19-64)

Secs. 106-194—106-215. Reserved.

DIVISION 2. PERMIT

Sec. 106-216. Required.

No person shall engage in, participate in, aid, form or start any parade unless a parade permit shall have been obtained from the chief of police. (Code 1982, § 19-53)

Sec. 106-217. Application.

(a) *Required.* A person seeking issuance of a parade permit shall file an application with the chief of police on forms provided by such officer.

(b) *Filing period.* An application for a parade permit shall be filed with the chief of police not less than seven days nor more than 30 days before the date on which it is proposed to conduct the parade.

(c) *Contents.* The application for a parade permit shall set forth the following information:

- (1) The name, address and telephone number of the person seeking to conduct such parade.
- (2) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of

*Cross reference—Traffic and vehicles, ch 118.

- the headquarters of the organization, and of the authorized and responsible heads of such organization.
- (3) The name, address and telephone number of the person who will be responsible for the conduct of the parade (i.e. parade chair).
 - (4) The proposed date when the parade is to be conducted.
 - (5) The proposed route to be traveled, the starting point, and termination point.
 - (6) The approximate number of persons who will constitute such parade.
 - (7) The proposed hours when such parade will start and terminate.
 - (8) The location of any assembly area for such parade.
 - (9) The time at which the units of the parade will begin to assemble at any such assembly area.
 - (10) If the parade is designed to be held by and on behalf of or for any person other than the applicant, the applicant for such permit shall file with the chief of police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his behalf.

- (11) An administration fee of \$300.00 unless the person applying for an application is unable to pay such fee.

(d) *Signature.* The person applying for a permit shall agree in writing to abide by all provisions of this article and shall sign the agreement. If the person applying is an entity rather than an individual the above signature shall be supplied by a duly authorized representative of such entity. (Code 1982, § 19-54)

Sec. 106-218. Regulation of time, place and manner of parade.

The following time, place, and manner regulations are to apply to all parades held within the town.

- (1) Parades shall take place within the parade routes designated herein and described in the exhibit on file in the office of the town clerk.
- (2) No animal-drawn or motorized vehicles shall be permitted within a parade.
- (3) Parades shall only be held between the hours of 9:00 a.m. and sunset, and only upon Sundays, or national holidays recognized by the federal government.
- (4) There shall be held within the town no more than one parade on any given day, with priority for any particular day to be granted to the first person to submit a completed application designating that day.
- (5) The maximum total duration of each parade and the assembly thereof shall be two hours.
- (6) Parades shall be no more than one-quarter mile in length from starting point to termination point.
- (7) The granting of a parade permit under this article shall not require the complete blockading of streets or intersections to vehicular traffic, and the town shall be empowered to apportion such streets and intersections for simultaneous use by parade participants and vehicular traffic.

- (8) The carrying or possession by any parade participant of any object that might readily be wielded as a weapon is prohibited within 300 yards of any parade. Such objects shall include, but not be limited to, any pole or stick of greater than three-quarter inch sharpened edge or point, dirk, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, sword, sword cane, firearm, or electric weapon or device.

- (9) The carrying or possession by any parade participant of any object constructed of any object that standing alone would be in violation of this article is prohibited within 300 yards of any parade.

- (10) Nothing herein shall preclude picketing or demonstrations on the public streets, sidewalks or parks of the town, which is otherwise permitted by state and federal law, so long as the picketing or demonstration otherwise complies with all town ordinances and the picketers or demonstrators are situated in a manner so as not to obstruct, impede, hinder or otherwise interfere with the orderly movement of pedestrian or vehicular traffic.

(Code 1982, § 19-55)

Sec. 106-219. Standards for issuance.

The chief of police shall issue a parade permit when from a consideration of the application and from such other information as may be otherwise obtained he finds that:

- (1) No other applicant has obtained priority for the date requested.
- (2) The parade applicant has agreed in writing to abide by all provisions set forth in this article.
- (3) All required information is set forth in the application and is in accordance with all provisions set forth in this article.
- (4) The concentration of persons and vehicles at assembly points of the parade will not interfere with the proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas.

(5) The conduct of such parade will not interfere with the movement of firefighting equipment en route to a fire or the movement of emergency medical services equipment in route to an emergency.

(6) The parade is scheduled to move from its point of origin to its point of termination expeditiously without unreasonable delays en route.

(7) The parade is not to be held for the purpose of advertising any product, goods or event, and is not designed to be held for private profit or fund raising.

(Code 1982, § 19-56)

Sec. 106-220. Notice of rejection.

The chief of police shall act upon an application for a parade permit within five days after the filing thereof and must notify the applicant of the approval or denial of the application within that same period. If the chief denies an application, a written notice stating the reasons for denial shall be sent to the applicant by certified mail and made available by the town for inspection, within the five-day period specified above.

(Code 1982, § 19-57)

Sec. 106-221. Appeal procedure and judicial review.

Any person aggrieved shall have the right to appeal the denial of a parade permit to the town. The appeal shall be taken within five days of notice of denial. If an appeal is made to the town, the town shall apply for expedited judicial review of its decision within 48 hours.

(Code 1982, § 19-58)

Sec. 106-222. Notice to town and other officials.

Immediately upon the issuance of a parade permit, the chief of police shall send a copy thereof to the town manager, who shall provide a copy to:

- (1) The mayor and town council.
- (2) The town attorney
- (3) The fire-rescue chief

(4) The director of the department of public works.

(Code 1982, § 19-59)

Sec. 106-223. Duties of permittee.

The permittee under this division shall comply with all provisions of this article, with all permit directions and conditions, and with all applicable laws and ordinances.

(Code 1982, § 19-60)

Sec. 106-224. Possession.

The parade chair or other person heading or leading such activity shall carry the parade permit upon his person during the conduct of the parade and shall be present at the parade.

(Code 1982, § 19-61)

Sec. 106-225. Revocation.

The chief of police shall have the authority to revoke a parade permit issued under this division upon application of the provisions set forth in this division applicable to parade permittees. The revocation of a permit may be appealed in the same manner and under the same time limitations as a permit denial.

(Code 1982, § 19-63)

Secs. 106-226—106-255. Reserved.

ARTICLE VII. SPECIAL EVENTS ON PUBLIC PROPERTY

DIVISION 1. GENERALLY

Sec. 106-256. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Special event means any meeting, activity or gathering of a group of persons having a common purpose, design or goal, upon any public street, sidewalk, alley, park, beach or other public place or building, which special event substantially inhibits the usual flow of pedestrian or vehicular

travel or which occupies any public area or building, which results in preempted use by the general public or which deviates from the established use. Nothing in this article shall preclude the use of such areas by the town for governmental purposes.

(Code 1982, § 10-432)

Cross reference—Definitions generally, § 1-2.

Sec. 106-257. Regulations relating to special event.

The following regulations shall apply to all special events held within the town:

- (1) There shall be held at the location requested no more than one special event on any given day, without priority for any particular date, to be granted to the first person to submit a completed application designating that day.
- (2) The maximum total duration of each special event and the assembly thereof shall be three hours.
- (3) Any signs, props or displays used in conjunction with the special event must be removed immediately after the time permitted for the special event has expired.
- (4) The use of banners, flags (other than flags of official governmental bodies), streamers, balloons or any similar devices, in connection with the event, shall be prohibited.
- (5) The use of decorated vehicles and trailers in connection with the event is prohibited.
- (6) The granting of a special event permit under this article shall not require the complete blockading of streets or intersections to vehicular traffic, and the town shall be empowered to apportion such streets and intersections for simultaneous use by special event participants and vehicular and pedestrian traffic.
- (7) The concentration of persons and/or vehicles at the special event will not interfere unduly with proper fire and police protection of, or ambulance service to, areas contiguous to the assembly area or other areas of the town.
- (8) There are sufficient parking places near to the site of the special event to accommodate the approximate number of automobiles reasonably expected to be driven to the special event.
- (9) The event is not otherwise in violation of ordinances or regulations of the town or the state or of federal law.

(Code 1982, § 10-435)

Sec. 106-258. Penalties.

Any person determined to be in violation of the provisions of this article, not relating to revocation of the permit, shall be subject to section 1-14.
(Code 1982, § 10-442)

Secs. 106-259—106-280. Reserved.

DIVISION 2. PERMIT

Sec. 106-281. Required.

No person shall engage in, participate in, aid, form or start any special event unless a special event permit shall have first been obtained from the town manager or his designee.
(Code 1982, § 10-433)

Sec. 106-282. Application.

(a) *Required.* A person seeking issuance of a special event permit shall file an application with the town clerk's office on forms provided by the town.

(b) *Filing.* A completed application for a special event permit, providing all information required herein, shall be filed with the town clerk's office not less than 30 days nor more than 90 days before the date on which it is proposed to conduct the special event.

(c) *Contents.* The application for a special event permit shall set forth the following information:

- (1) The name, address and telephone number of the person seeking to conduct such a special event.
- (2) The purpose of the special event.

- (3) If the special event is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization, and of the authorized and responsible heads of such organization.
- (4) The date on which the special event is to be conducted.
- (5) The exact hours the special event is to be conducted.
- (6) The name or type of event.
- (7) The exact location of the event.
- (8) The approximate number of participants and spectators.
- (9) A detailed description of the activity or activities, including whether or not the event requires support facilities such as traffic control, parking volume, crowd control.
- (10) The name of the applicant's insurance company for the event. The town shall be named as an insured on a policy of liability insurance in an amount not less than \$1,000,000.00.
- (11) The signature of the applicant.
- (12) The name, address and telephone number of the person who will be responsible for the conduct of the special event (i.e., special event chair).
- (13) Provisions for cleanup after conclusion of the special event. The applicant shall be responsible for costs of complete and immediate cleanup.
- (14) An application fee of \$150.00.
(Code 1982, § 10-434)

Sec. 106-283. Standards for issuance.

The town manager's office shall issue a special event permit when from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

- (1) No other applicant has obtained a permit for the date requested.

- (2) The special event applicant has agreed in writing to abide by all provisions set forth in this article.
- (3) All required information is set forth in the application and is in accordance with all provisions set forth in this article.
- (4) The concentration of persons and vehicles at assembly points of the special event will not interfere with the proper fire and police protection of or ambulance services to areas contiguous to such assembly areas.
- (5) The conduct of such special event will not interfere with the movement of police and fire rescue vehicles and equipment en route to a fire or the movement of emergency medical services equipment en route to an emergency.
- (6) The special event is not being held for the purpose of advertising any product, goods or event, and is not designed to be held for private profit or fund raising.
- (7) The conduct of the special event will not substantially interrupt the safe and orderly movement of pedestrian or vehicular traffic contiguous to the place of the special event.
- (8) The conduct of the special event will not result in damage to town-owned property or constitute a hazard to the safety of other persons within the immediate vicinity of the event.
- (9) No event is scheduled elsewhere in the town where the town's resources required for that event are so great that the deployment of resources for the proposed assembly would have an immediate and adverse effect upon the welfare and safety of persons and property.
- (10) An original certificate of insurance must be supplied to the town naming the town as an insured on a policy of liability insurance in an amount not less than \$1,000,000.00.

(Code 1982, § 10-436)

Sec. 106-284. Notice of approval or denial.

The town manager shall act upon an application for a special event permit within 15 days

after the filing thereof and must notify the applicant of the approval or denial of the application within that same period. If the town manager denies an application, a written notice stating the reasons for denial shall be sent to the applicant by certified mail and made available by the town for inspection within the 15-day period specified above. (Code 1982, § 10-437)

Sec. 106-285. Appeal procedure.

Any person aggrieved shall have the right to appeal the denial of a special event permit to the town council. The appeal shall be taken within five days of notice of denial. If an appeal to the town council is made, the town council shall act upon such appeal at the next regular monthly meeting of the town council subsequent to the notice of appeal. (Code 1982, § 10-438)

Sec. 106-286. Duties of permittee.

The permittee under this division shall comply with all provisions of this article, other laws and ordinances of the town, state and federal government, and all permit directions and conditions of the permit. (Code 1982, § 10-439)

Sec. 106-287. Possession.

The special event chair or other person heading or leading such special event shall carry the special event permit upon his person during the conduct of the special event and shall be present at the special event. (Code 1982, § 10-440)

Sec. 106-288. Revocation.

The town manager or his designee shall have the authority to revoke a special event permit issued under this division upon violation of the provisions applicable to special event permittees. If a special event is held in violation of the terms of the permit, the permit shall be determined to be null and void and may be immediately terminated. The revocation of a permit may be appealed in the same manner and under the same time limitations as a permit denial. (Code 1982, § 10-441)

ARTICLE VIII. MOVEABLE FIXTURES WITHIN THE RIGHT-OF-WAY

Sec. 106-289. Purpose and scope.

The purpose of the following is to promote the public health, safety and welfare through the regulation of placement, type, appearance, servicing, and insuring of newsracks and modular newsracks on public rights-of-way so as to:

- (1) Provide for pedestrian and driving safety and convenience.
- (2) Restrict unreasonable interference with the flow of pedestrian and vehicular traffic, including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles.
- (3) Provide for public and property safety during hurricane conditions.
- (4) Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes.
- (5) Relocate and/or replace newsracks and modular newsracks which result in a visual blight and/or excessive space allocation on the public rights-of-way or which unreasonably detract from the aesthetics of store window displays, adjacent landscaping and other improvements, as well as to have abandoned newsracks and modular newsracks removed.
- (6) Maintain and protect the values of surrounding properties and prevent damage to grass right-of-way areas.
- (7) Reduce unnecessary exposure of the public to personal injury or property damages.
- (8) Treat all newspapers equally regardless of their size, content, circulations, or frequency of publication.
- (9) Maintain and preserve freedom of the press.

**TOWN OF PALM BEACH
REVOCABLE PERMIT APPLICATION
FOR A PARADE**

NOTE: For further information applicant should refer to Article VI, Sections 106-191 through 106-225 of the Town of Palm Beach Code of Ordinances.

Submit completed form to Office of the Chief of Police, 345 South County Road, Palm Beach, Florida 33480. The Chief of Police, or a designee, will act upon the application for the parade permit within five days of receipt by his office and will notify applicant of the approval or denial of the applications within that same period. If the Chief of Police denies an application a written notice stating the reasons for denial shall be sent to the applicant by certified mail, and made available by the Town for inspection, within the five day period specified above. Procedures for appeal will be set forth in written notice of denial.

Date of Application

Application Fee: \$300.00

Name of Applicant

Telephone Numbers

() _____

Street Address

Local

() _____

City, State and Zip Code

Other

() _____

Authorized Representative
(Parade Chairperson)

Local

() _____

Other

() _____

Address of Representative

City, State and Zip Code

If the parade is proposed to be conducted for, on behalf of, or by an organization(s), the name, address and telephone number of the headquarters of the organization(s) and authorized responsible heads of such organization(s) should be listed below.

<u>Date of Parade</u>	<u>Starting Time</u>	<u>Ending Time</u>
Proposed Route of Parade and Assembly Area. (check one only)	()	Royal Palm Way – South two lanes to eastern termination, assemble at Royal Palm Way and South Lake Trail.
	()	Royal Poinciana – North two lanes to eastern termination, assemble at Bradley Park.

Time of assembly_____

Number of persons who will constitute such parade_____

PLEASE READ CAREFULLY

The undersigned applicant agrees to comply with all provisions set forth in the Town of Palm Beach Ordinance 14-90 for Regulations of Parades, and the following parade standards:

1. No person shall engage in, participate in, aid, form, or start any parade, unless a parade permit shall have been obtained from the Chief of Police, or his designee.
2. Filing Period: An application for a parade permit shall be filed with the Chief of Police not less than 7 days or more than 30 days before the date on which it is proposed to conduct the parade.
3. Parades shall only be held between the hours of 9:00 a.m. and sunset, and only upon Sundays or national holidays recognized by the Federal Government of the United States of America.
4. No animal drawn or motorized vehicles will be part of the parade.
5. The maximum duration of the parade and assembly thereof shall be two hours.
6. The concentration of persons and vehicles at assembly points of the parade will not interfere with the property fire and police protection of, or ambulance service to, areas contiguous to such assembly areas.

7. The parade shall be no more than ¼ miles in length from starting point to termination point.
8. The granting of a parade permit under this ordinance shall not require the complete blockading of streets or intersections to vehicular traffic, and the Town of Palm Beach shall be empowered to apportion such streets and intersections for simultaneous use by parade participants and vehicular traffic.
9. The carrying or possession by any parade participant of any object which might readily be wielded as a weapon is prohibited within 300 yards of any parade. Said objects shall include, but not be limited to, any: pole or stick of greater than three quarter inches (3/4") in diameter, object with sharpened edge(s) or chemical weapon or device, sword, sword cane, firearm, or electric weapon or device.
10. The parade is scheduled to move from its point or origin to its point of termination expeditiously without reasonable delays in route.
11. The parade is not being held for the purpose of advertising any product, goods or event and is not designed to be held for private profit or fund raising.
12. The parade chairperson or person leading such activity will be present at the parade and will carry the parade permit on his/her person during the parade.
13. The Chief of Police or his designee shall have the authority to revoke a parade permit for violation of any of the terms set forth under the above listed ordinance.

Applicant (type or print and sign name)

Date

(For Administrative Use Only)

Approved ()

Disapproved ()

Kirk W. Blouin, Chief of Police

Date

Comments: _____

**TOWN OF PALM BEACH RETIREMENT SYSTEM
POLICE OFFICER BOARD OF TRUSTEES
FIREFIGHTER BOARD OF TRUSTEES**

**P.O. BOX 2112
PALM BEACH, FL. 33480
WORK: 561-906-7318
FAX: 561-828-4699**

Raymond Snow, Chairman
Michael Lynch, Chairman Pro Tem
Gerald Goldsmith

Chris Proscia, Secretary
James McC. Wearn

Wilbur Ross, Chairman
Michael Hays, Chairman Pro Tem
Carol Rathborne

Jayson French, Secretary
Sergio de Araujo

August 26, 2010

Mayor and Members of Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL. 33480

Re: GASB Preliminary Views

Dear Mayor and Members of Town Council,

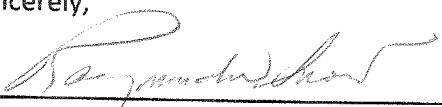
The Firefighter Board of Trustees and Police Officer Board of Trustees met on Friday, August 20, 2010, and Tuesday, August 24, 2010, respectively, at which time a presentation was provided to the trustees by Mr. Randy Dzieubek, Gabriel, Roeder and Smith, regarding preliminary views being considered by the Governors of the Governmental Accounting Standards Board (GASB). Mr. Dzieubek discussed that the GASB Board is reviewing accounting and disclosure requirements for employers who sponsor Defined Benefit plans, and that preliminary views were issued June 16, 2010. He stated that if approved, the proposed GASB requirements will create major changes to the sponsor's balance sheet, but would have no direct impact on funding calculations provided by the retirement plan's actuary.

The Police Officer Board of Trustees and Firefighter Board of Trustees are concerned that the new GASB preliminary views, if adopted, would drastically change the reporting of liabilities of the plans on the employer's financial statements. The calculation of liabilities would be based on discounted rates that may include a blend of the long term rate and bond yields. He discussed that assets would be required to be valued at market valuation, which would result in significantly greater unfunded liability reported than what would be reported with the annual actuarial valuations. Finally, Mr. Dzieubek discussed the GASB view on calculation of pension expenses, including a potential for shorter amortization period for paying of the unfunded liabilities and a requirement that plans report the immediate recognition of asset gains and losses that exceed a 15% corridor (benchmarked by market valuation of assets).

The GASB Board has allowed for a comment period until September 17, 2010. Public hearings will be available in October, and an exposure draft of the new standard will probably be targeted for the second quarter, 2011, with the anticipation of a final standard adopted in the second quarter, 2012. Mr. Dzieubek has indicated that sponsors will soon be faced with numerous implementation and transitional issues if these views are adopted.

The Police Officer Board of Trustees and Firefighter Board of Trustees would like to bring the matter of the GASB preliminary views to your immediate attention, and ask that you consider strategies for participating in the process, including the filing of comments. The Trustees would also like to offer to you any assistance for information related to this matter.

Sincerely,



Raymond Snow, Chairman

Sincerely,



Wilbur Ross, Chairman

RE: **Potential Effects of the GASB's Preliminary Views**
FROM: Paul Zorn*
DATE: August 30, 2010

This memorandum analyzes the potential effects of the GASB's proposed changes to pension accounting and reporting standards for governmental employers. The analysis is done by applying several of the key changes to a modeled public pension plan, based on a medium-sized, statewide plan covering general employees. In evaluating changes to accounting standards, the GASB considers three key criteria: accountability, decision-usefulness, and interperiod equity. The analysis raises serious concerns over how well the proposed changes would meet these criteria.

On June 16, 2010, the Governmental Accounting Standards Board (GASB) issued its Preliminary Views (PV)¹ on proposed changes to accounting and financial reporting standards for pensions. If approved, the changes would apply to state and local governmental employers that sponsor defined benefit (DB) pensions. However, the changes would apply only within the context of accounting and financial reporting and would not necessarily apply to the actuarial calculations used to fund DB benefits.

The underlying goal of the GASB's Postemployment Benefits (PEB) project is to review current accounting and financial reporting standards related to postemployment benefits. In considering changes to accounting standards, the GASB uses three key criteria to evaluate various accounting and reporting approaches:

- **Accountability:** Would the resulting measures help hold public officials accountable to their constituents by providing an accurate accounting of financial transactions?
- **Decision-Usefulness:** Would the measures provide the information needed by decision-makers and stakeholders to make informed decisions?
- **Interperiod Equity:** Would the measures help determine whether the costs of governmental services are allocated equitably across current and future taxpayers?

The following memorandum illustrates some of the potential effects of the GASB's proposed changes. This is done by applying several of the GASB's key changes to a modeled public pension plan, based on a medium-sized, statewide plan covering general employees. The GASB's changes are applied as if they were applicable in 1983, and the proposed accounting measures are estimated based on the plan's historical experience through 2009. (See Appendix A for additional information about the underlying methodology.) Because this necessarily requires certain simplifications, the results are intended as illustrative rather than definitive.² Nevertheless,

* Paul Zorn is Director of Governmental Research for GRS and is located in its Southfield office. For their thoughtful comments, the author would like to thank David Kausch, Jim Rizzo, and Brad Armstrong at GRS, as well as Keith Brainard at the National Association of State Retirement Administrators (NASRA) and Leigh Snell at the National Council on Teacher Retirement (NCTR). However, the author retains full responsibility for the accuracy of the information. In addition, the opinions offered are those of the author and do not necessarily reflect the views of GRS as an organization.

¹ The PV is titled: "Preliminary Views of the Governmental Accounting Standards Board on major issues related to Pension Accounting and Financial Reporting by Employers" and is available at www.gasb.org.

² In addition, the results would not necessarily reflect the experience of governments under substantially different circumstances than those modeled.

the author believes the results reasonably reflect the underlying dynamics and potential effects of the proposed changes.

Overview of the GASB's Proposed Changes

Before discussing the results, it may be useful to compare the GASB's proposed changes with its current approach. The GASB's current accounting measures for pensions are closely linked to the actuarial funding measures. The GASB's current measure of the employer's pension expense, (i.e., the Annual Pension Cost), consists of the employer's Annual Required Contribution (ARC), plus certain adjustments if the employer has contributed more or less than the ARC over time. The ARC, in turn, is the employer's actuarially determined contribution, which includes the Normal Cost (i.e., the Service Cost) of benefits accrued during the period, plus amortization of the Unfunded Actuarial Accrued Liability (and actuarial gains/losses) over a period not longer than 30 years.

The GASB's current measure of the employer's pension liability (i.e., the Net Pension Obligation), is the difference between the employer's Annual Pension Cost and the contributions actually made by the employer. Moreover, additional information about the employer's actuarial liabilities and the funded status of the plan are presented as required supplementary information in the employer's annual financial report. This information includes: the Actuarial Accrued Liability, Actuarial Value of Assets, Unfunded Actuarial Accrued Liability, and the plan's Funded Ratio. Typically, the Actuarial Value of Assets is determined using a method that averages (or smoothes) investment gains/losses over time, often 5 years.

The GASB's proposed changes would disconnect pension accounting from pension funding. The GASB's proposed accounting measure of the employer's pension liability (i.e., the Net Pension Liability) would reflect the employer's unfunded pension obligation, but would be significantly different from the actuarial approach. First, in determining the Net Pension Liability, the Market Value of Assets (rather than the Actuarial Value of Assets) would be subtracted from the Total Pension Liability. This would make the Net Pension Liability more volatile than the Unfunded Actuarial Accrued Liability, since the Market Value of Assets is not smoothed. Second, the Total Pension Liability would be calculated using a "blended" discount rate reflecting some combination of the long-term expected investment return and municipal bond yields. In the next section, the blended rate will be discussed in more detail.

In addition, the GASB's proposed new accounting measure of the pension expense (i.e., the PV Pension Expense) would disconnect it from the funding measure reflected by the Annual Pension Cost.³ Although the PV Pension Expense would include a measure of the Service Cost based on the Entry Age Normal actuarial cost method, the methods for amortizing actuarial gains and losses in the PV Pension Expense would be very different from the current approach. This is discussed further in the section on the PV Pension Expense.

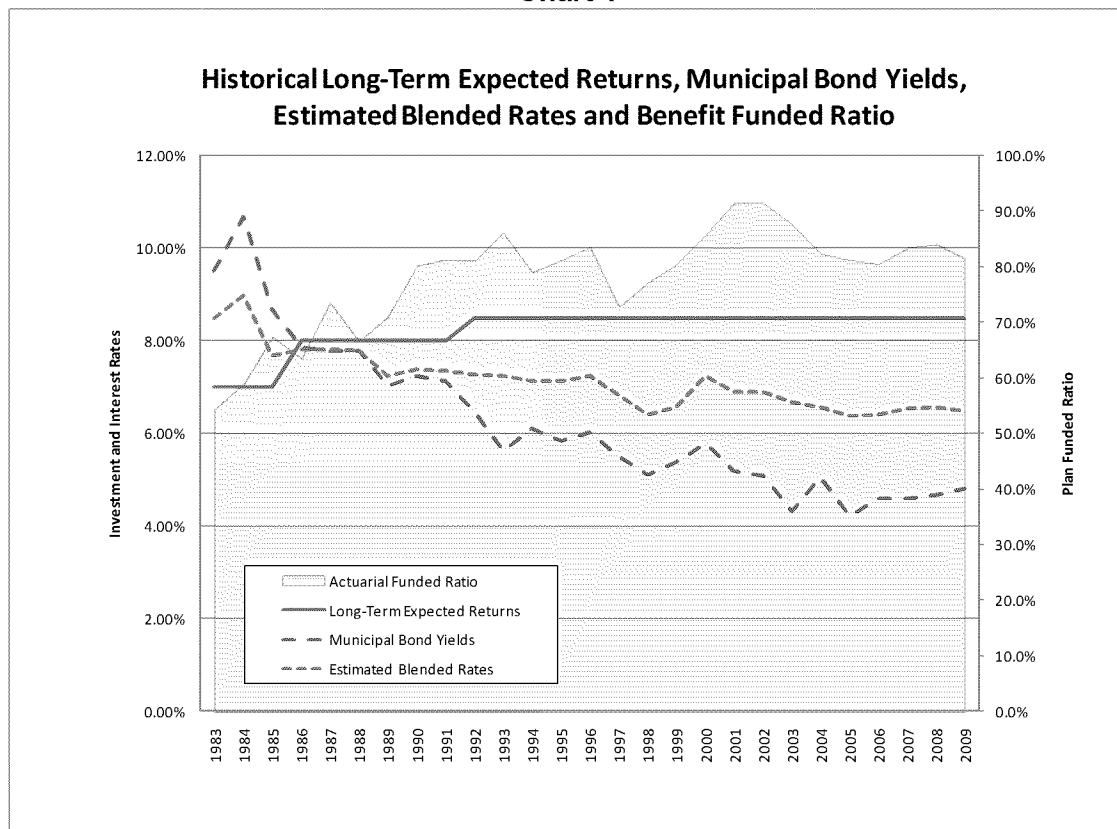
Expected Investment Returns and Municipal Bond Yields

Interest rates and investment returns are key factors that drive the actuarial valuations used to fund public pension plans, as well as the GASB's proposed accounting measures. For actuarial valuations of public plans, the long-term expected investment return serves to estimate future investment earnings as well as to discount future benefit payments in order to determine the present value of the pension liability.

³ The term "PV Pension Expense" is used in this memorandum to distinguish the measure of pension expense proposed in the Preliminary Views from the general term for pension expense.

As discussed on the previous page, the Net Pension Liability would be determined using a blended discount rate, based on some combination of the long-term expected return and municipal bond yields. The blended rate would reflect the long-term expected return to the extent current and expected future assets (including expected future contributions and investment earnings) are sufficient to pay expected future benefits. However, to the extent current and expected future assets are not sufficient, municipal bond yields would be combined with the long-term expected return to determine the blended rate.⁴ Note that under this approach, the long-term expected return could be used as the discount rate, provided current and future expected contributions and investment earnings are sufficient to pay future benefits. (See Appendix B for an example of how the blended rate would be calculated.) Chart 1 shows these rates over the study period.

Chart 1



In Chart 1, both the long-term expected returns and the municipal bond yields are based on historical data. The blended rate is based on the plan's funded ratio and factors developed from a simplified projection of the plan's future cash flows. While this approach does not exactly determine the blended rate, it provides a reasonable approximation and helps to simplify the analysis.⁵

Several things are interesting about the chart. First, the municipal bond yields are higher than the plan's long-term expected returns from 1983 to 1986. This was a time of high inflation, and most

⁴ The GASB PV indicates the municipal bond yields would be based on an index of high-quality municipal bonds. The yields used in this study reflect an index of tax-exempt, general obligation municipal bonds published by the *Bond Buyer*. The GASB PV does not specify whether the index used to determine the blended rate would be based on taxable or tax-exempt municipal bonds.

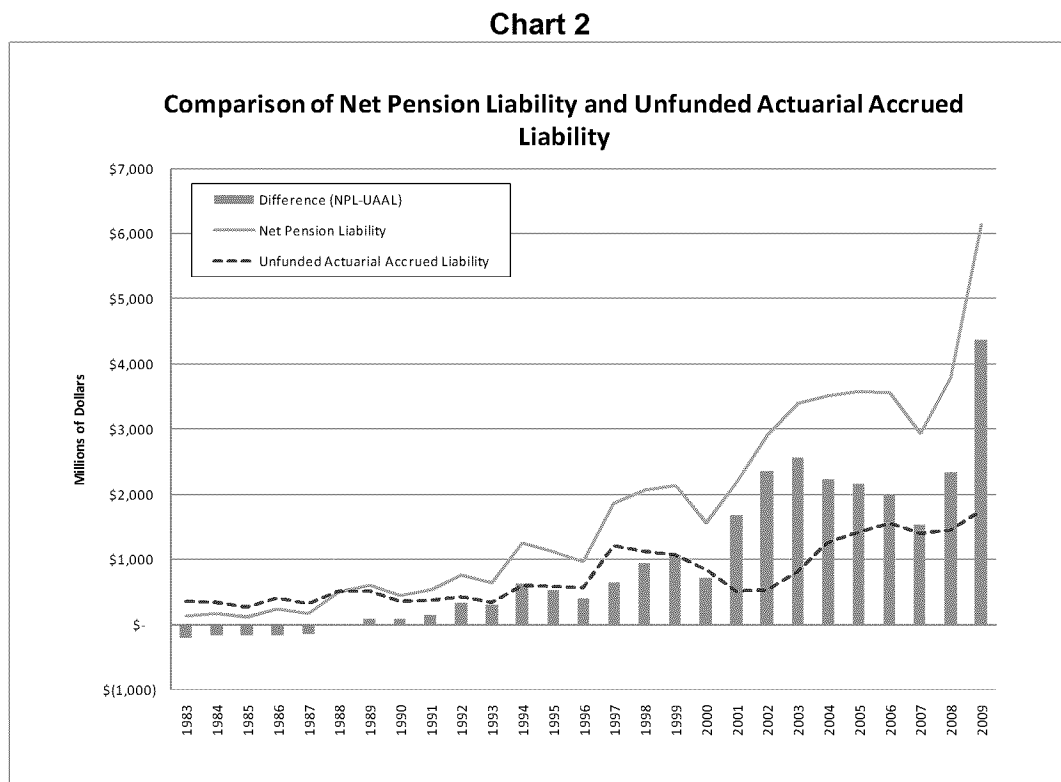
⁵ In actual practice, the blended discount rate would not be based on the plan's funded ratio, but rather on the degree to which current and projected future assets are sufficient to pay expected future benefits.

bond yields were in the double-digit range. As a result, the blended rate would have been higher than the long-term expected return during this period. This is because the plan's low funded ratio at the time (between 55% and 70%) would have caused a large portion of the (higher) municipal bond yields to be included in the blended rate. Since pension liabilities are inversely proportional to the discount rate, use of the higher blended rate would have resulted in lower measures of the pension liabilities than determined using the long-term expected returns.

Second, municipal bond yields declined (somewhat erratically) between 1987 and 2006, and would have been significantly lower than the long-term expected returns (by 150 to 350 basis points) over much of that time. This would have resulted in significantly higher (and more erratic) measures of the pension liabilities. This is discussed further in the next section.

The Net Pension Liability

The Net Pension Liability is intended to reflect the employer's unfunded pension obligation, but would be measured differently than the Unfunded Actuarial Accrued Liability used for funding purposes. First, the Total Pension Liability used to determine the Net Pension Liability would be based on the blended discount rate rather than the long-term expected return. Second, the Market Value of Assets would be subtracted from the Total Pension Liability to calculate the Net Pension Liability, introducing significant volatility into the measure. Chart 2 shows results for the Net Pension Liability and Unfunded Actuarial Accrued Liability over the study period.⁶



⁶ In order to demonstrate the difference between the Net Pension Liability and the Unfunded Actuarial Accrued Liability for this study, it was assumed that current and future expected assets would be insufficient to cover expected future benefits and so the blended discount rate was used to determine the Net Pension Liability. However, for the plan on which the model is based, the Annual Pension Cost was paid throughout the study period. Consequently, the sponsoring employer would likely have been able to use the long-term expected return as the discount rate. This would have lowered the Net Pension Liability but would not have affected the volatility resulting from the Market Value of Assets.

From 1983 through 1987, the Net Pension Liability would have been about half of the Unfunded Actuarial Accrued Liability. This is because the plan was underfunded during the period and municipal bond yields were much higher than the long-term expected return. Consequently, the blended discount rate would have been higher than the expected return, lowering the Net Pension Liability below the Unfunded Actuarial Accrued Liability.

For the remainder of the study period, the Net Pension Liability would likely have been significantly higher than the Unfunded Actuarial Accrued Liability. First, the blended discount rate would have been lower than the long-term expected return, resulting in a higher measure of the Total Pension Liability.

Second, the use of the Market Value of Assets would have introduced significant volatility into the Net Pension Liability. As shown in Chart 2, the Net Pension Liability and the Unfunded Actuarial Accrued Liability would have diverged sharply in 2000, as the first financial downturn of the decade caused the value of equity investments to fall and increase unfunded liabilities. This would have immediately increased the Net Pension Liability, but would have had less of an effect on the Unfunded Actuarial Accrued Liability (due to smoothing of investment gains). As a result, between the years 2000 and 2009, the Net Pension Liability would have been at least double or triple the amount of the Unfunded Actuarial Accrued Liability.

As investment returns improved between 2003 and 2007, the Net Pension Liability would have leveled off and then declined, while the Unfunded Actuarial Accrued Liability increased (due to smoothing of investment losses). In 2008, the second financial downturn drove asset values down even further. This would likely have resulted in an unprecedented increase in the Net Pension Liability in 2009, to almost four times the Unfunded Actuarial Accrued Liability.

The PV Pension Expense

In addition to changing the pension liability for accounting purposes, the GASB is also proposing to change the measure of pension expense. Currently, the pension expense is the Annual Pension Cost, which consists of the Normal Cost (also called the Service Cost) plus the amortization of the Unfunded Actuarial Accrued Liability (and actuarial gains/losses) over a period of not more than 30 years.

Recognizing Liability Gains/Losses

The new PV Pension Expense would be fundamentally different from the Annual Pension Cost. While the PV Pension Expense would include the Service Cost (based on the Entry Age Normal actuarial cost method) it would also fundamentally differ in how the Unfunded Actuarial Accrued Liability and actuarial gains/losses are recognized in the measure of pension expense.

Determining the pension liability depends on a variety of economic and demographic assumptions. These assumptions may differ from actual experience and so lead to differences between the expected pension liability and the actual pension liability from year to year. To the extent these differences lead to a change in the pension liability related to past service, they would need to be recognized in the PV Pension Expense. The same is true for changes in assumptions and benefits.

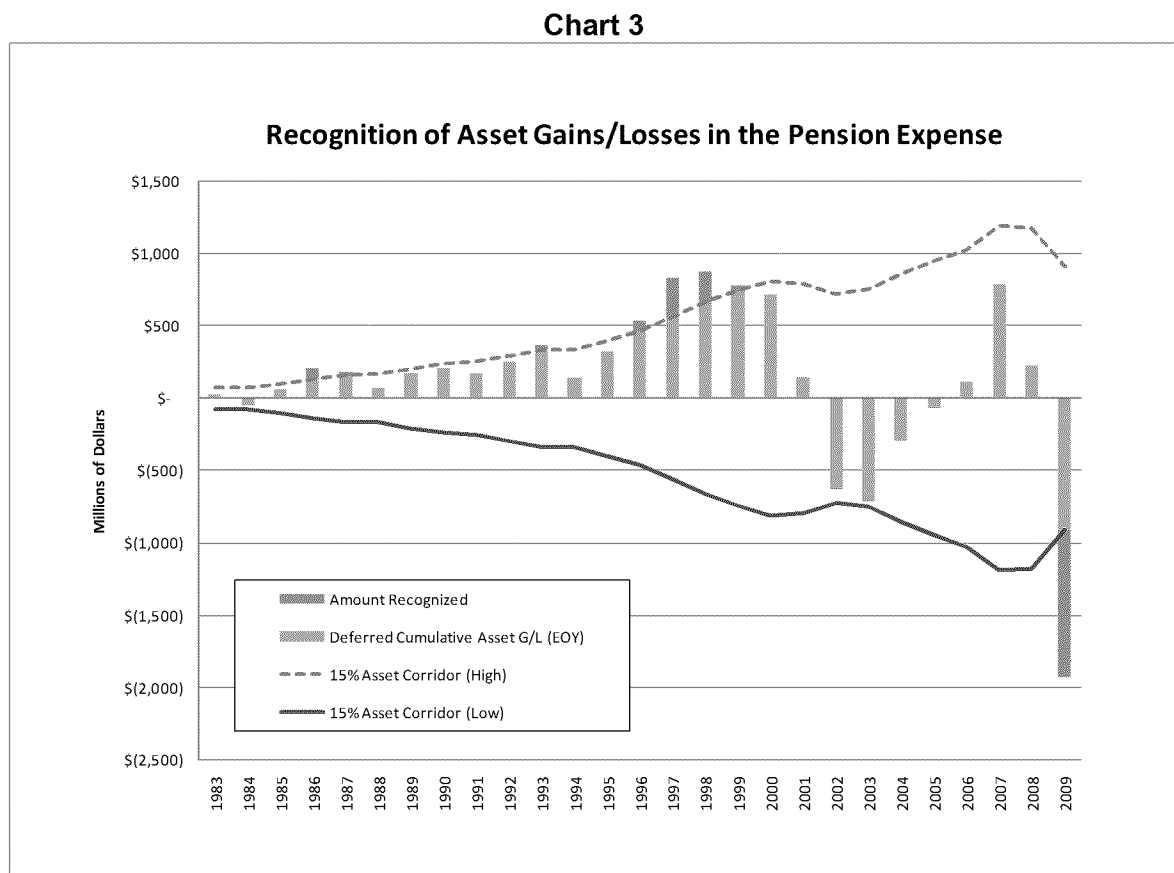
The GASB proposes amortizing these liability gains/losses over the expected remaining service lives of active employees. Moreover, to the extent the liability gains/losses relate to vested inactive members (including retirees and beneficiaries) the gains/losses would be recognized immediately in the PV Pension Expense. For accounting and reporting purposes, this change

would reduce the amortization period for liability gains/losses from a maximum of 30 years to about 10 to 20 years (or less). The reduction in the amortization period would likely lead to a higher and more volatile measure of the PV Pension Expense.

Recognizing Asset Gains/Losses

With regard to asset gains and losses, the GASB proposes to defer recognition of changes in assets to the extent the cumulative differences between actual investment earnings and long-term expected earnings remain within a 15% corridor around the market value of net plan assets. However, when the cumulative difference between actual and expected investment earnings falls outside of the corridor, the portion outside the corridor would be recognized immediately.

Chart 3 shows how asset gains/losses would likely have been recognized in the PV Pension Expense for the modeled plan over the study period.

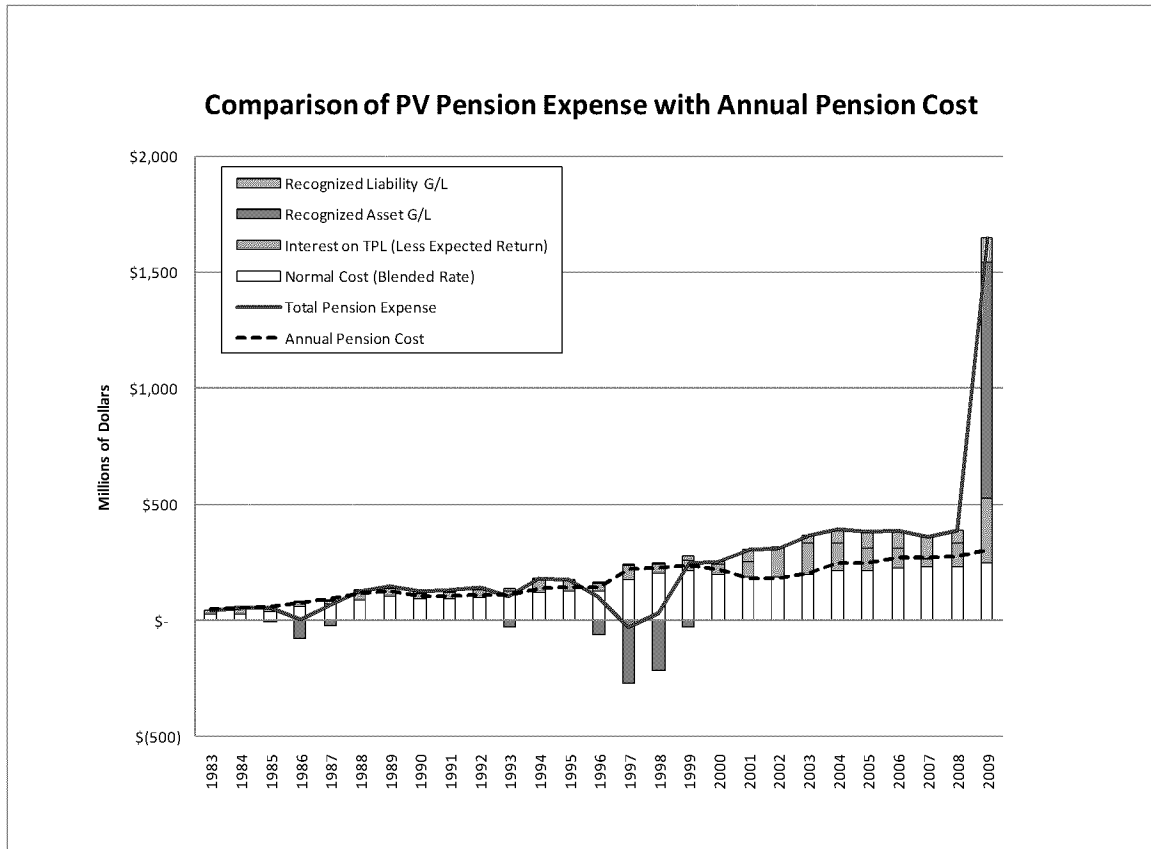


Several things are interesting about this chart. First, as assets increase, so do the deferral corridors. Although the corridors contract at times, the contraction is temporary. Consequently, as time goes by, a larger dollar amount is allowed to be deferred.

Second, the asset gains/losses would be recognized infrequently and typically at unusual times in the markets. As shown in Chart 3, most of the asset gains would have been recognized in the mid-1990s, a time when investment returns were unusually high. Similarly, asset losses would be recognized at times when returns were unusually low, such as 2009.

Rather than recognizing asset gains/losses in a systematic way, the proposed approach would recognize them erratically, leading to similar fluctuations in the PV Pension Expense. Chart 4 shows the PV Pension Expense compared with the Annual Pension Cost over the study period.

Chart 4



As Chart 4 shows, although recognition of asset gains/losses outside the 15% corridor would be infrequent, it would have had a strong impact on the PV Pension Expense. For example, it would have resulted in a negative PV Pension Expense in 1997 (and a nearly negative PV Pension Expense in 1986), at times when the Annual Pension Cost was strongly positive. Also, in 2009, it would have been the major contributor to the more than four-fold increase in the PV Pension Expense from the prior year.

Conclusions

In proposing changes to current pension standards, the GASB's goals are to provide accounting information that: (1) holds public officials accountable to their constituents for financial transactions; (2) is needed by decision makers and stakeholders to make informed decisions; and (3) measures the degree to which the costs of governmental services are equitably allocated across current and future taxpayers.

While these are important goals, the above analysis raises serious concerns over how well the proposed changes would meet the goals. With regard to accountability, the proposed changes would likely make it more difficult to hold public officials accountable for funding pension benefits. As shown in Charts 2 and 4, the Net Pension Liability and PV Pension Expense would not reflect the Unfunded Actuarial Accrued Liability and Annual Pension Cost used to fund the plan. Consequently, they would not be useful benchmarks for determining whether required contributions have been made or whether the funded status is improving.

With regard to informed decisions, the Net Pension Liability and PV Pension Expense could send misleading signals with regard to the contributions necessary to fund the benefits as well as the benefits' funded status. As shown in Chart 2, at times when municipal bond yields are high (e.g., 1983 – 1986) the Net Pension Liability could be significantly lower than the Unfunded Actuarial Accrued Liability. This could lead decision-makers to conclude the benefits were well funded and erroneously decide to reduce contributions. Similarly, as shown in Chart 4, at times when the PV Pension Expense is low or negative (e.g., 1986 and 1997), decision makers might also interpret this as a reason to lower contributions.

With regard to interperiod equity, Charts 3 and 4 show that a substantial portion of unusually high asset gains or losses would be immediately recognized in the PV Pension Expense (e.g., 2009). This would allocate a significant portion of the asset gains/losses to taxpayers in that year, even though those asset gains/losses might be offset by future gains/losses. A more equitable approach would be to amortize asset gains/losses evenly over multiple years, so that taxpayers in a given year are not disproportionately burdened or advantaged.

Appendix A – Model and Methodology

The results of this paper are based on a pension plan modeled using historical data from a statewide plan covering general employees.⁷ The data were collected from actuarial reports and annual financial reports prepared from 1984 to 2009. The results reported for the plan's Unfunded Actuarial Accrued Liability and Annual Pension Cost are based closely on the historical actuarial valuations of the plan, including the plan's Actuarial Accrued Liabilities and Normal Costs. However, certain changes were made to improve the consistency of the results. For example, while the statewide plan's amortization period for unfunded liabilities varied from year to year, it was set to a 30-year open amortization period for the study.

The results reported for the Net Pension Liability were derived from the historical Actuarial Accrued Liabilities by adjusting the Actuarial Accrued Liabilities to reflect the difference between the plan's long-term expected return and the blended discount rate based on the duration and convexity of the liabilities. The Net Pension Liability was then calculated by subtracting the historical Market Value of Assets from the adjusted Actuarial Accrued Liability. In calculating the PV Pension Expense, the Service Cost component was also adjusted to reflect the blended discount rate.

⁷ Plans for public safety employees have different demographic and benefit characteristics than plans for general employees and teachers. Consequently, the specific results of this study may not necessarily be representative of public safety plans. Nevertheless, it is likely the results would have generally been similar for public safety plans.

Appendix B – Calculating the Blended Discount Rate

As discussed in the GASB's Preliminary Views, the blended discount rate would reflect the long-term expected return to the extent current and expected future assets (including expected future contributions and investment earnings) are sufficient to pay expected future benefits. However, to the extent current and expected future assets are not sufficient, municipal bond yields (reflecting an index of high-quality municipal bonds) would be used.

The blended discount rate plays a key role in many of the calculations proposed in the GASB's Preliminary Views, including the Total Pension Liability, the Net Pension Liability, and the Service Cost component of the PV Pension Expense. However, the method for determining the blended rate is complicated and somewhat unclear. The following table offers a simplified example of a process for determining the blended discount rate.

						Expected Return	8.00%	
						Municipal Bond Rate	4.00%	
						Blended Rate	6.54%	
Year	Assets (BOY)	Expected Payments (BOY)	Expected Contributions (BOY)	Expected Investment Earnings (EOY)	Assets (EOY)	Rates Used to Develop the Blended Rate	PV Expected Payments Using Expected Return & Municipal Bond Rate	PV Expected Payments Using the Blended Rate
1	600	100	10	41	551	8.00%	100	100
2	551	100	10	37	498	8.00%	93	94
3	498	100	10	33	440	8.00%	86	88
4	440	100	10	28	378	8.00%	79	83
5	378	100	10	23	311	8.00%	74	78
6	311	100	10	18	239	8.00%	68	73
7	239	100	10	12	161	8.00%	63	68
8	161	100	10	6	77	8.00%	58	64
9	77	100	10	-1	-14	4.00%	73	60
10	-14	100	10	-8	-113	4.00%	70	57
							764	764

In this example, a plan expects to pay benefits of \$100 per year over the next 10 years. At the beginning of year 1, it has assets of \$600, expects contributions of \$10 per year over the period, and expects to earn 8% on the available assets and contributions. Contributions and payments are made at the beginning of the year and investment earnings are paid at the end of the year. The current municipal bond rate is 4%.

To determine the blended rate, the expected return is used to discount the present value of benefit payments to the extent current and expected future assets are sufficient to pay benefits. In the example above, current and expected plan assets are available through year 8 and so the blended discount rate reflects expected returns for the first 8 years. After that, the municipal bond yield is used to determine the present value of benefit payments. Using these rates produces a total present value of expected future benefit payments equal to \$764.

According to the GASB, the blended rate is a single rate that would result in the same present value of benefit payments as determined by applying the expected return and municipal bond rates in the manner described above. So, to determine the blended rate, we need to find a single discount rate that, when applied to the benefit payments, produces a total present value of \$764. As shown in the rightmost column of table, this discount rate is demonstrated to be 6.54%.

Thursday, September 02, 2010

Director of Research and Technical Activities
Project No. 34
Governmental Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

Dear Madam/Sir:

We thank GASB for providing this opportunity to provide our comments on the Preliminary Views related to Pension Accounting and Financial Reporting by Employers.

[Please insert a brief description of your ORGANIZATION]. As users of public accounting data, our comments are as follows:

To begin, we wish to recognize the work GASB has done to improve accountability, decision-usefulness, and interperiod equity in public pensions. We believe these are appropriate goals for public pension accounting. As recognized in the PV, governments and governmental plans are long-term entities. GASB has consistently supported measures of pension costs that spread the normal costs over employees' careers as a level percentage of payroll. We believe this long-term perspective is appropriate for governments, and that spreading pension costs over employees' careers helps support interperiod equity.

Is the net pension liability measureable with sufficient reliability?

The net pension liability will behave differently from the unfunded actuarial accrued liability used for funding purposes. Because the net pension liability is based on the market value of assets and the unfunded actuarial accrued liability is typically based a smoothed value of assets, they will likely rise and fall at different times. Also, the net pension liability will be more volatile than the unfunded actuarial accrued liability. This would likely confuse and mislead decision makers and citizens as to the "true" liability and funded status of benefits.

In addition, by disconnecting the accounting measures from the funding measures, the proposed changes would undermine the degree to which the financial information is useful for holding public officials accountable. The current accounting standards, by closely linking funding and accounting, provide clear measures of whether employers are making their actuarially required contributions. The GASB's proposed changes, by disconnecting the accounting and funding measures, will make it more difficult to determine whether public officials are making the full actuarially determined contributions.

Do you agree with using a blended discount rate to determine the net pension liability?

Using municipal bond yields to discount pension liabilities could affect the measure of the liabilities in misleading ways. For example, in times of high inflation (e.g., the early- to mid-

1980s), municipal bond yields were higher than long-term expected returns. Consequently, the blended discount rate at those times could have been higher than the long-term expected return. This, in turn, could have resulted in a net pension liability that would have been lower than the unfunded actuarial accrued liability. Since pension liabilities are not directly related to municipal bond yields, linking them to the pension liability could lead to misleading results.

Using municipal bond yields that change each year would add unnecessary volatility into the net pension liability. This is inconsistent with the long-term nature of governments and could result in measures of the net pension liability and pension expense that do not support interperiod equity. For example, if municipal bond yields fall sharply (as they did from 1984 to 1986), the net pension liability and pension expense based on the blended rate could sharply rise, creating additional accounting liabilities and service costs that are unrelated to the cost of funding the benefits.

Should certain changes in the liability be amortized over active employees' remaining service lives?

Reducing the amortization period would increase the pension expense and add volatility. This would have a particularly negative impact on employers that sponsor pension benefits for public safety officers, whose remaining working careers are much shorter than for general employees and teachers. These shorter amortization periods could result in a measure of pension expense that has little relation to the actuarially determined contributions and consequently lead to wrong decisions about the contributions needed to fund the benefits.

Immediately recognizing changes related to retirees could result in unintended consequences. For example, in the case of an ad hoc cost-of-living adjustment (COLA), the full cost of the COLA would need to be included in the pension expense in the year it was given. This could be a disincentive against providing ad hoc COLAs.

Immediately recognizing changes related to retirees could also be a disincentive against employers changing their actuarial assumptions. For example, in changing mortality assumptions, the employer would have to immediately recognize the full cost of the mortality change applicable to the retirees, and include it in the pension expense. This may prompt employers to be reluctant to update their assumptions.

Should asset gains and losses be deferred within a 15 percent corridor around the market value of assets?

Under this approach, historically large market gains and losses would be recognized immediately. Large investment losses due to unusually large market declines could sharply increase the pension expense at a time when the employing government would be under significant fiscal pressure. Large investment increases could lower the pension expense (possibly below zero) and create pressures to increase benefits or reduce contributions, even though the investment gain constituted an unusual event. This approach would likely result in

an erratic recognition of investment gains and losses, rather than recognition that is more measured and systematic. A better approach would be to amortize investment gains and losses over the remaining lifetimes of active and retired plan members, or over a fixed period that approximates the remaining lifetimes.

Should employers in cost-sharing plans recognize a proportionate share of the collective net pension liability and pension expense?

The GASB's proposed approach to measuring cost-sharing employers' net pension liability and expense does not reflect the nature of cost-sharing plans, in which risks, costs, and assets are shared across all employers.

The employer's proportionate share of the plan's net pension liability and pension expense may change due to circumstances beyond the employer's control. For example, an employer's proportionate share could change due to changes in the economic or demographic characteristics of other employers in the plan. As a result, cost-sharing employers could be held accountable for changes over which they have no control.

In conclusion, we thank GASB for providing this opportunity to provide comments. Additionally we wish to recognize the work GASB has done to improve accountability, decision-usefulness, and interperiod equity in public pensions. As recognized in GASB's 2006 White Paper and reaffirmed in the PV, governments and governmental plans are long-term entities. GASB has consistently supported measures of pension costs that spread the normal costs over employees' careers as a level percentage of payroll. We believe this long-term perspective is appropriate for governments, and that spreading pension costs over employees' careers helps support interperiod equity.

Sincerely,

[Please insert signatory/ies]

June 16, 2010

PRELIMINARY VIEWS SUPPLEMENT

Preliminary Views of the Governmental Accounting Standards Board: Plain-Language Supplement

Pension Accounting and Financial Reporting by Employers

This plain-language supplement to a
Preliminary Views is issued by the Board for public comment.

Written comments should be addressed to:

Director of Research and Technical Activities
Project No. 34

Comment Deadline: September 17, 2010



Governmental Accounting Standards Board
of the Financial Accounting Foundation

To order additional copies of this supplement (Product Code No. GV12S) or copies of the full Preliminary Views (Product Code No. GV12), contact the GASB Order Department at 1-800-748-0659, or order online at www.gasb.org.

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Preliminary Views of the Governmental Accounting Standards Board:

Pension Accounting and Financial Reporting by Employers

June 16, 2010

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This document is a plain-language supplement to the Preliminary Views, *Pension Accounting and Financial Reporting by Employers*, issued by the Governmental Accounting Standards Board. This supplement is prepared for citizens, taxpayers, elected representatives, municipal analysts, and other external users of governmental financial information and contains a minimum of technical terminology. The supplement references the Preliminary Views and should be read in conjunction with it. The Preliminary Views can be downloaded from the same location as this supplement: www.gasb.org. Questions for users of governmental financial information are posed throughout this supplement. Instructions for responding to the questions are on pages 15 and 16. *Preparers and auditors of financial statements and actuaries are requested to answer the questions posed in the Preliminary Views.*

OVERVIEW

The primary goal of the Governmental Accounting Standards Board (GASB) is to develop high-quality standards of accounting and financial reporting for state and local governments. High-quality standards lead to information in financial reports that improves transparency, assists users in assessing accountability, and is useful for making decisions. The GASB periodically reviews its existing standards to determine whether they continue to achieve these objectives effectively.

The GASB's standards for accounting for and reporting on the pension benefits that governments provide to their employees have been in effect for over a decade. In 2006, the GASB began a research project to examine whether those standards are effective in providing decision-useful information, supporting accountability and transparency, and helping people to assess interperiod equity (the degree to which a government raises sufficient resources in a given year to cover that year's costs, as opposed to, for instance, consuming resources accumulated in previous years).

In 2009, the GASB issued an Invitation to Comment that described key issues identified during the research project and explored potential approaches to addressing them. After considering responses from nearly 120 individuals and organizations, the GASB has developed a Preliminary Views containing a set of broad principles and concepts that may lead to changes to the existing standards to improve their effectiveness.

It should be noted that the Preliminary Views relates solely to accounting and financial reporting and does not apply to how governments approach the funding of their pension plans. At present, there generally is a close connection between how governments fund pensions and how they account for and report information about them in audited financial reports. The principles and concepts in the Preliminary Views would separate how the accounting and financial reporting is determined from how pension benefits are funded. Should the GASB's preliminary views become accounting and financial reporting standards in the future, governments would not be required to mirror the accounting and financial reporting changes in their funding approaches.

This supplement discusses issues in the order they are raised in the Preliminary Views. Each section of this supplement concludes by posing questions specifically written to ask users of governmental financial information how the GASB's preliminary views would affect the decision usefulness of the information they receive and their ability to assess government accountability and interperiod equity. Users also may answer the questions posed in the Preliminary Views. *Other readers of this supplement, such as actuaries or persons who prepare*

or audit government financial statements, are requested to answer the questions in the Preliminary Views rather than the questions in this supplement.

THE NATURE OF A GOVERNMENT'S PENSION OBLIGATION

Key Issues: How does an obligation to provide pension benefits arise? Does a government's promise to provide pension benefits when its employees retire constitute a liability that should be reported in the financial statements?

Employees of state and local governments generally receive two types of compensation in return for their labor—current compensation (salaries and health insurance benefits, for the most part) and deferred compensation (primarily pensions and retiree health insurance). Both current and deferred compensation are earned by the employees as they work. But whereas salaries and other forms of current compensation generally are received by employees while they are employed by the government, deferred compensation is not received until after employees have retired or otherwise left the employment of the government. The most common form of deferred compensation is pension benefits.

In the Preliminary Views, the GASB affirms this understanding of the nature of pension benefits—that they are a form of deferred compensation that is earned as employees work for a government—an understanding that underlies the existing pension standards.

Responsibility for the Pension Obligation

The fact that pension benefits earned today are not received by the employees until some point in the future when they retire means that a government has an obligation *now* to provide those benefits at that future time. Most governments make payments to a pension plan to accumulate resources for the purpose of making future payments when they come due and thereby meet that obligation. The contributions to the pension plan are calculated to be what is needed to acquire investments that will have sufficient value to meet this objective.

The Preliminary Views states that for financial reporting purposes, **the employer is primarily responsible for the obligation to the extent that sufficient assets have not yet been set aside to satisfy the obligation. The pension plan is primarily responsible for the obligation to the extent that dedicated assets exist.** (This decision is discussed in Chapter 2 of the Preliminary Views.)

In other words, if on a given date the obligation for pension benefits equals \$1 million, and the value of assets in the pension plan equals \$800,000, then the pension plan is responsible, first and foremost, for \$800,000 of the pension obligation. The government is primarily responsible for the remaining \$200,000 and secondarily responsible for the \$800,000 obligation, should the assets in the plan decline in value.

The Net Pension Liability

At present, neither the total obligation for pensions nor the unfunded portion is reported as a liability in a government's financial statements. Rather, a liability is reported if a government contributes less than the annual required contribution calculated by actuaries (based on the

requirements of the GASB's standards). In developing the Preliminary Views, the GASB considered whether the portion of the total obligation for which the government is primarily responsible constitutes a liability that should be reported in the government's financial statements. GASB Concepts Statement No. 4, *Elements of Financial Statements* (which did not exist when the current standards were written), defines liabilities as "present obligations to sacrifice resources that the government has little or no discretion to avoid."

In the Preliminary Views, the GASB has taken the position that **the portion of the pension obligation that is not covered by assets in the pension plan—the *unfunded* obligation—is a liability of the government.** (Chapter 3 of the Preliminary Views discusses the applicability of each of the components of the definition of a liability.)

Furthermore, the GASB believes that **this liability meets the criteria for being reported in the government's accrual-based financial statements** (all statements except those for the governmental funds), as described in Concepts Statement No. 3, *Communication Methods in General Purpose External Financial Reports That Contain Basic Financial Statements*. That is, the liability (total pension liability minus plan net assets) is believed to be "measurable with sufficient reliability." The Preliminary Views refers to this liability as a *net pension liability*.

Summary of GASB Views

- Pension benefits are a form of compensation promised by governments to their employees in exchange for work performed.
- The pension plan is primarily responsible for the pension obligation to the extent that assets have been accumulated in the plan (by government and employee contributions and investment earnings) to finance the pension benefits; the government is secondarily responsible for this *funded* portion of the obligation.
- The government is primarily responsible for the remaining *unfunded* portion of the obligation.
- The unfunded portion of the pension would be reported as a *net pension liability* in the financial statements of the government.

Questions for Users about the Nature of the Pension Obligation

1. *Do you agree or disagree with the GASB's views regarding the nature of the pension obligation? Why do you agree or disagree?*
2. *How would those views affect any or all of the following:*
 - a. *The usefulness of the information to the analyses you perform, the work you do, or the decisions you make?*
 - b. *Your ability to assess a government's accountability?*
 - c. *Your ability to assess interperiod equity?*

MEASURING A GOVERNMENT'S TOTAL PENSION LIABILITY

Key Issues: How should the amount of the pension liability be measured? What methods and assumptions should be used in the calculation?

Because pension benefits are paid in future years and are based in part on events that have not occurred yet (for instance, future salary increases), governments employ actuarial methods to estimate how much the benefit payments will be in future years. An actuary's *valuation* is the product of many assumptions regarding the factors that affect the amount of benefits that will be paid to employees and their beneficiaries in the future. These assumptions are based on historical experience and expectations about the future.

The factors that are included in estimates of the amount of benefits to be paid may include, but are not limited to:

- How many employees of a government are expected to receive benefits
- How long employees are expected to work for the government
- How long employees are expected to live after retiring (and, hence, how many years they will receive benefits).

The projected future cash outflows for pension benefits are converted (discounted) to their present value—their estimated value in today's dollars. Portions of the present value generally are attributed to the past, current, and future years during which employees have worked or are expected to work in exchange for the benefits.

The portion of the present value related to services provided by employees in prior years serves as the basis for determining the total pension liability described in the previous section. As previously noted, the total liability minus the net assets in the pension plan equals the net pension liability a government would report in its financial statements.

The GASB affirms in the Preliminary Views the general current practice of incorporating expectations of future employment-related events (such as salary increases and years of continuing employment until retirement) and other assumptions into projections of pension benefit payments. (This and the following views described in this section are discussed in Chapter 4 of the Preliminary Views.)

Cost-of-Living Adjustments

Some pension plans include provisions for adjusting benefits to keep pace with rising prices—*automatic cost-of-living adjustments* (COLAs). *Ad hoc* COLAs, on the other hand, are not written into the provisions of the pension plan; they are made at the discretion of the government. Automatic COLAs are currently included in benefit projections, but *ad hoc* COLAs are not.

Under the Preliminary Views, *ad hoc* COLAs also would be included in benefit projections if an employer's past practice of granting *ad hoc* COLAs indicates that the COLAs effectively have become automatic.

The implication of this view is that, for some employers, the amount of projected future pension benefit payments would be greater than under current standards. As a result, the present value of the future benefit payments and the net pension liability to be reported by those governments also would be larger. The GASB believes that this would be a more accurate

reflection of the total obligation of a government that provides ad hoc COLAs in a virtually automatic manner.

Discount Rates

If you were to try to calculate how much you would receive in the future if you invested a certain amount today, you would need to determine how much the investment would earn—the interest rate. For any given amount invested today, a higher interest rate anticipates larger future returns. Alternatively, for any given payments to be received in the future, a lower interest rate would require you to invest a larger amount today. For example, if you wanted to receive annual payments of \$100 for each of the next 10 years, and the interest rate were 6 percent, then you would need to invest about \$736. However, if the interest rate were 3 percent, then you would need to invest more—about \$853.

The process of converting or discounting projected pension benefit payments into their present value is a similar process and requires assuming an interest or *discount rate*. At present, the accounting and financial reporting standards require governments to apply a discount rate that is based on their expected rate of return on the investments of the pension plan over the long term.

However, in some cases, the assets held by a pension plan over time, including future contributions and earnings, may not be expected to fully cover projected benefit payments. In such circumstances, the GASB does not believe that it is appropriate to use the rate of return on plan investments to calculate the present value of future benefit payments for which plan assets will not be available.

It is the GASB's view that a reasonable long-term expected rate of return on the plan's investments would continue to be the basis for discounting projected benefit payments to their present value, but only to the extent that the current and expected future plan net assets will be sufficient to cover the future benefit payments. This portion of the pension liability is not like traditional debt or other long-term liabilities, in that assets are set aside in an irrevocable trust and invested on a long-term basis to satisfy the pension liability.

Benefit payments that are expected to occur beyond the point at which expected plan assets are projected to be exhausted would be discounted to their present values using a high-quality municipal bond index rate. This portion of the liability is more akin to other forms of long-term debt.

The result of combining these two rates is an average rate that is weighted according to proportions of future benefit payments for which plan net assets are projected to be available or not. The impact of using a single weighted average discount rate depends on whether the high-quality municipal bond index is higher or lower than the long-term expected rate of return. For example, at the present time, most high-quality municipal bonds carry an interest rate that is lower than that of average long-term pension plan investment returns. Therefore, if a government's benefit payments are expected to exceed projected plan assets, all other things being equal, the result of using a lower discount rate would be a larger present value and therefore a larger net pension liability in the financial statements. The GASB believes that this is a more accurate depiction of the level of resources that will be consumed by the promised benefit payments.

Method of Attributing the Present Value of Benefit Payments to Specific Periods

After the projected benefit payments have been discounted to their present value, an actuary allocates that present value over a period related to the years when the employees work or are expected to work for a government and earn the benefits. At present, governments can choose among six methods for attributing the present value of benefit payments to specific years, for accounting and financial reporting purposes. The way in which the present value is divided among prior, current, and future years has an effect on the amounts of the benefits that are identified as being related to services in each period and therefore the amount reported as pension expense in the financial statements. In addition, the method of attribution affects the amount of the benefits assigned to past periods—the total pension liability.

The attribution of the present value of benefit payments is done either in *level dollar* amounts or as a *level percentage of projected payroll*. The level dollar method divides the liability into equal dollar amounts over the appropriate number of years. The level percentage method calculates payments so that they equal a constant percentage of projected payroll over time.

Some people like having multiple attribution methods to choose from because it is flexible and supports consistency between how governments make funding decisions and how they account for and report pensions in their audited financial reports. However, other people believe that allowing numerous approaches to allocation adversely affects the comparability of the resulting information, making it difficult for financial statement users to compare governments.

The Preliminary Views would require, for the purposes of accounting and financial reporting, that all governments discount projected benefits to their present value when employees first entered the government's employment (the entry age method) and attribute that value to employees' expected periods of employment as a level percentage of projected payroll. (Again, it should be noted that this requirement, as with any aspect of the GASB's pension standards, would apply only to accounting and financial reporting; governments may make other choices when deciding how they wish to fund their pension plans.)

The GASB views the attribution patterns that result from the entry age and level percentage of payroll methods as more representative of how pension benefits are earned. In other words, the entry age and level percentage of payroll methods reflect the ongoing annual exchange of service for benefits over the course of an employee's period of employment in amounts that keep pace with the employee's projected salary over that period.

Although moving from a choice among six attribution methods to a single required method would be a significant change, the GASB believes that potential disruption would be minimized for two reasons. First, the entry age method is the most commonly used of the six options at present. Second, most governments currently choose a level percentage of payroll approach over level dollar.

Summary of GASB Views

- Future salary increases and future periods of employment with the government would continue to be incorporated into projections of pension benefit payments.

- Automatic COLAs would continue to be incorporated into projections of pension benefit payments, and ad hoc COLAs would be included as well if an employer's practice indicates that the COLAs are essentially automatic.
- A single weighted-average discount rate would be used, based on the long-term expected rate of return on the assets of the plan to the extent that projected benefit payments will be covered by current and expected plan assets, and a high-quality municipal bond index beyond the point at which assets are not available.
- Projected pension benefits would be discounted to each employee's entry age and attributed to the employee's expected term of service as a level percentage of payroll.

Questions for Users about Measuring the Total Pension Liability

3. *Do you agree or disagree with the GASB's views regarding how the total pension liability should be measured? Why do you agree or disagree?*
4. *How would those views affect any or all of the following:*
 - a. *The usefulness of the information to the analyses you perform, the work you do, or the decisions you make?*
 - b. *Your ability to assess a government's accountability?*
 - c. *Your ability to assess interperiod equity?*

REPORTING CHANGES IN A GOVERNMENT'S NET PENSION LIABILITY

Key Issues: *When should year-to-year changes in the net pension liability be reported as expenses? Should there be different timing of expenses depending on the type of change in the net pension liability?*

The size of a government's net pension liability changes from year to year for a variety of reasons:

1. Employees work and earn more benefits
2. The outstanding liability accrues interest
3. Actual economic and demographic factors differ from what was assumed in the calculation of the pension liability
4. Changes are made in assumptions about economic and demographic factors
5. Changes in the terms of the pension plan affect benefits associated with employee services in past years
6. The value of plan net assets changes.

The amount of the net pension liability, as discussed so far, equals (a) the portion of the present value of the future pension benefit payments a government will make to its current and former employees that is attributed to past periods *minus* (b) the net assets set aside in the plan that are available to pay benefits. A key accounting and financial reporting issue is when to recognize period-to-period changes in the net pension liability as a cost of a government's operations—as expenses in the accrual-based financial statements.

Changes to Be Reported as Expenses Each Year

The Preliminary Views discusses how changes in the net pension liability would be reflected in the financial statements. (The tentative decisions described in this section are discussed in Chapter 5.) **Each year, benefits earned by employees in exchange for their services and the interest on the beginning balance of the total liability would be reported as expenses.** (Refer to Items 1 and 2 above.) Pension benefits and interest costs are reported as expenses annually as they are earned or accrue, respectively. Likewise, the effects of changes in plan net assets other than investment earnings (for instance, contributions) would be incorporated into expenses when the changes occur.

In contrast, the effects of other changes in the net pension liability would be accumulated and systematically reported as expense each year until an employee retires.

Changes to Be Reported as Expenses over the Remaining Period of Employment

Predictions of economic and demographic factors are not precise, and in general, the actual experience turns out to be different from what was assumed. Furthermore, governments may change their assumptions periodically to acknowledge a persistent difference between assumed and actual experience, or because some other event (such as a long-term economic downturn) suggests that future experience will be different. **Changes in the liability related to (1) the difference between assumed and actual economic and demographic factors and (2) changes in the assumptions would be systematically spread over the employees' remaining service periods—the time from now until the employees retire—and each year's portion would be reported as expenses,** based on the Preliminary Views. (Refer to Items 3 and 4 above.) If a key goal of financial reporting is to aid in the assessment of interperiod equity, then it is rational to recognize expenses while the benefits are being earned—that is, over an employee's term of employment.

Occasionally, the terms of a pension plan may be changed in a way that retroactively changes the amount of benefits that were considered earned by employees for service in past years. Because most states, through constitutions or statutes, prohibit a reduction in the pension benefits of current and former public employees (as opposed to prospective reductions in the benefits of employees hired in the future), virtually all of these retroactive benefit changes are improvements in benefits that increase the size of the net pension liability and the annual costs. (Refer to Item 5 above.)

An increase in the net pension liability due to retroactive benefit improvements would be recognized as expense over periods representative of the employees' remaining service. In concept, the GASB believes that it is appropriate that the cost of benefit improvements be

expensed while the employees are still working for the government and not assigned to periods after they retire when the government is no longer receiving service from them.

At present, governments may recognize the changes resulting from Items 3–5 over a period of up to 30 years. The implications of the GASB’s views in this area would be that most governments would recognize these costs as pension expenses sooner than they do at present. For instance, benefit changes affecting retirees and other persons no longer working for a government (and thus with no remaining service period) would be recognized as expense immediately.

Again, it should be noted that these proposals would be required only for accounting and financial reporting purposes. Governments would not have to change their annual pension contributions to match the change in expense reporting.

Investment Earnings

Broadly, a pension plan’s assets that can be used for providing benefits derive from three sources—employer contributions, employee contributions, and earnings on the investment of those contributions. As noted previously, all other things being equal, a relatively greater return on investments would lower the amount a government would need to contribute to ensure that sufficient assets are available in the plan to pay benefits when due. Alternatively, a relatively lesser return would require a government to contribute more.

The long-term expected rate of return on plan investments, therefore, is a key factor in determining what it costs a government (reported as expenses) to provide a given level of pension benefits. To the extent that investments earn less than expected, a government’s pension expenses will be greater. To the extent that investments earn more than expected, it serves to net against and lower a government’s pension expense.

Under the existing accounting and financial reporting standards, annual changes in the value of pension plan investments may not immediately impact the unfunded pension obligation or pension expense. Rather, the increases or decreases in value are permitted to be recognized over several years (most often three to five); this is often called asset smoothing. This is done as part of planning how a government will fund its pensions. The objective is to minimize the impact of normal year-to-year volatility of investment values on the size of the obligation, so that annual contributions to the pension plans follow a reasonably predictable trend over time.

The incorporation of asset smoothing into the present accounting and financial reporting standards has been criticized by some because, in their view, it may delay a government’s reaction to significant changes in the value of plan assets, and it diminishes the comparability of the unfunded obligation measure from government to government.

The Preliminary Views describes a different approach that bridges these concerns about current practice. The net pension liability would be calculated by subtracting pension plan net assets available for benefits, including the fair value of investments (not a value based on smoothing annual changes in fair value), from the total pension obligation.

As with assumed economic and demographic factors, assumed returns on plan investments would be incorporated into the pension expense each year. But should actual returns above or below the assumed rate be part of the expense calculation as well? The Preliminary Views would not include differences between the assumed and actual returns in the expense calculation immediately. (Refer to Item 6 above.) Rather, **the annual difference between the assumed and actual investment return would accumulate in the financial statements as deferred inflows**

(returns above the assumed rate) or deferred outflows (returns below the assumed rate), but only to a certain extent.

What does that mean? Generally, actual returns are greater than assumed in some years and lower than assumed in other years. Over time, these differences would be expected to approximately offset each other. The GASB believes that it generally is not appropriate to include in the calculation of annual pension expense these differences in returns that are expected to offset one another.

However, there is a limit to how much would be deferred and not included in the pension expense. **If the deferred outflows (or inflows) accumulate to an amount that exceeds 15 percent of the plan's investments, then the excess amount would be reported as expense (or a reduction of expense) immediately.**

This proposal would serve to remove normal fluctuations in investment values that, over time, are expected to have no net impact on expenses. However, events that have a cumulative impact on asset values that is expected to take a relatively long period to offset (an impact that exceeds the 15 percent limit), such as a large increase or decline in the stock market, *would* be incorporated in the expense calculation immediately.

Summary of GASB Views

Changes in the amount of the net pension liability would be incorporated into the calculation of annual pension expense in the following ways:

- (1) Pension benefits earned, (2) interest cost on the beginning balance of the total pension liability, and (3) changes in plan net assets not related to investments would be reported as expenses each year as they occur.
- (a) Differences between expected and actual economic and demographic factors relevant to the calculation of the total pension liability, (b) changes in assumptions about those factors, and (c) changes in pension plan terms that affect the amount of benefits attributed to past years, would be systematically reported as expenses over a period representative of the remaining service periods of employees.
- Differences between assumed returns on pension plan investments and actual returns would be deferred as long as the accumulated deferred inflows or deferred outflows do not exceed the equivalent of 15 percent of the fair value of pension plan investments. Any amount beyond 15 percent would be incorporated into the expense calculation immediately.

Questions for Users about Reporting Changes in the Net Pension Liability

5. *Do you agree or disagree with the GASB's views regarding when changes in the components of the net pension liability should be reported? Why do you agree or disagree?*
6. *How would those views affect any or all of the following:*
 - a. *The usefulness of the information to the analyses you perform, the work you do, or the decisions you make?*
 - b. *Your ability to assess a government's accountability?*
 - c. *Your ability to assess interperiod equity?*

GOVERNMENTS IN COST-SHARING MULTIPLE-EMPLOYER PENSION PLANS

Key Issue: Should governments that participate in a cost-sharing multiple-employer pension plan report a net pension liability, as would governments in sole and agent multiple-employer plans?

The issues discussed to this point have related almost entirely to governments participating in single-employer and agent multiple-employer pension plans. As their name indicates, single-employer plans involve only one government, whereas multiple-employer plans include more than one government.

In *agent* multiple-employer plans, separate accounts are maintained to ensure that each employer's contributions are used to provide benefits only for the employees of that government. Individual employers are responsible for benefits associated with their own employees only, and separate actuarial calculations are made for each participating government in the plan. It is like a collection of single-employer plans. However, to take advantage of economies of scale, the cost of administering the plan is shared by the participating governments, and the plan assets generally are pooled for investment purposes.

In a *cost-sharing* multiple-employer plan, on the other hand, governments pool (share) the costs of providing benefits and administering the plan and the assets accumulated to pay benefits. A single actuarial valuation is conducted for all of the employees of the participating governments *combined*.

The present accounting and financial reporting requirements for governments participating in cost-sharing plans reflect the pooling of risks and assets by not requiring actuarial information to be presented for individual employers. Instead, this information is required to be presented in the cost-sharing pension plan's own financial statements. For instance, the disclosures and supplementary schedules that track the level of plan funding over time and compare actual contributions with the amount the actuarial calculations say should be contributed are not presented by the individual governments, only by the plan.

However, it does not appear that the needs of the users of information about cost-sharing plans and their participating governments are substantially different from the needs of users of sole and agent pension plan financial reports. For instance, users want to know if a government in a cost-sharing plan, like other government employers, incurred an obligation to provide pension benefits to employees as they have worked.

Net Pension Liability

Similar to the tentative conclusion that the unfunded portion of the pension obligation of a single or agent employer is a liability of the government that should be reported in the financial statements—a net pension liability—the GASB believes that the unfunded portion of a cost-sharing pension plan’s obligation is the primary responsibility of the participating governments as a group. **Each participating government, therefore, would report a net pension liability based on its proportion of the unfunded obligation of all of the participating governments.**

Changes in the Net Pension Liability

Broadly, there are two sources of changes in the net pension liability that would affect each individual participating government. First, the collective employers’ pension obligation changes due to the factors described in the preceding section (Items 1–6). The collective effect of those changes on expense and deferred outflows (inflows) would be determined using the same methods proposed for governments in single-employer or agent multiple-employer plans. (Refer to the Summary of GASB Views in the preceding section.) **A participating government would report its proportionate share of those collective changes.**

Second, a change in a government’s proportionate share of the collective employers’ pension obligation would change the liability it reports.

Summary of GASB Views

- The portion of a cost-sharing multiple-employer pension plan’s pension obligation for which assets are not available—the unfunded pension obligation—is a liability of the participating governments, not the plan itself.
- A government participating in a cost-sharing plan would report a liability in its own financial statements that is equivalent to its proportionate share of the collective unfunded obligation.
- A government participating in a cost-sharing plan would report its proportionate share of changes in the employers’ collective pension obligation using the same methods (expense or deferred outflows/inflows) proposed for governments in single-employer and agent multiple-employer pension plans.

Questions for Users about Governments in Cost-Sharing Plans

7. *Do you agree or disagree with the GASB's views regarding governments in cost-sharing multiple-employer plans? Why do you agree or disagree?*
8. *How would those views affect any or all of the following:*
 - a. *The usefulness of the information to the analyses you perform, the work you do, or the decisions you make?*
 - b. *Your ability to assess a government's accountability?*
 - c. *Your ability to assess interperiod equity?*

THE TIMING AND FREQUENCY OF PENSION MEASUREMENTS

Key Issues: How often should actuarial measurements take place for the purposes of accounting and financial reporting? When should actuarial measurements take place in relation to a government's fiscal year-end?

The Preliminary Views states that the net pension liability would be measured as of the end of a government's fiscal year. Doing so would require determination of two key pieces of underlying information—the total pension liability and the value of plan assets.

An actuarial valuation of the pension obligation would need to be performed at least once every two years, according to the Preliminary Views. The valuation date would not need to be the employer's fiscal year-end; however, it would need to be a date no more than 24 months prior to the fiscal year-end on which the net pension liability is being reported.

Measurements made earlier than the fiscal year-end would have to be updated to incorporate changes that took place in the interim that have an effect on the net pension liability. How would an update compare with a new actuarial valuation? The procedures needed to update an actuarial valuation to the employer's fiscal year-end would depend on the extent of the impact of events and transactions since the last actuarial valuation. An update might adjust the net pension liability for benefits earned, interest on the total liability, and benefit payments since the last actuarial measurement. However, if there have been significant changes since the last actuarial measurement, a new actuarial valuation might be needed.

The actuarial valuation that produces the measure of the unfunded pension obligation under current standards also is required to be conducted at least every other year. In practice, many governments have annual valuations. At present, it is possible that the underlying actuarial valuation on which a government's pension expense is based could be more than two years old by the end of the fiscal year for which the government is reporting, or more than three years old if a government has valuations done every other year.

The result of pursuing this view would be more up-to-date information about the size of a government's unfunded pension obligation. Comparability across governments would be improved as well, because each government's net pension liability would be based on

information as of the end of its fiscal year. That would alleviate concerns about outdated information.

Summary of GASB Views

- The net pension liability (total liability minus the value of plan net assets) would be measured as of the end of a government's fiscal year.
- Actuarial valuations to measure the total liability would take place at least every other year.
- The date of the actuarial valuation used to report an employer's net pension liability would not have to be the employer's fiscal year-end; however, it would have to be no more than 24 months prior to the end of a government's fiscal year.
- Measurements of the net pension liability that take place earlier than the end of a government's fiscal year would be updated to reflect all significant changes between the actuarial valuation date and the fiscal year-end.

Questions for Users about the Timing and Frequency of Measurements

9. *Do you agree or disagree with the GASB's views regarding the timing and frequency of the measurement of the net pension liability and its components? Why do you agree or disagree?*
10. *How would those views affect any or all of the following:*
 - a. *The usefulness of the information to the analyses you perform, the work you do, or the decisions you make?*
 - b. *Your ability to assess a government's accountability?*
 - c. *Your ability to assess interperiod equity?*

WHAT INFORMATION DOES THE GASB NEED TO PROCEED WITH THIS PROJECT?

When the GASB sets standards, a crucial part of its "due process" activities is the publication of documents for public discussion and comment. The GASB relies on the comments of the people who prepare and audit financial statements to assess the technical accuracy and appropriateness of potential approaches to addressing accounting and financial reporting issues. The GASB often poses questions regarding critical issues in its due process documents.

The users of financial statements, on the other hand, are in the best position to help the GASB understand whether or not the information that would result from the potential approaches would be useful for fulfilling their need for governmental financial information. The substance of the comments from each of the GASB's constituents is more important to the GASB's deliberations than the total number of people for or against a certain approach. A Preliminary

Views is not an opinion poll, and the GASB's ultimate decisions are not necessarily those with the most popular support.

You can help the GASB to complete this project by reviewing the issues raised in the Preliminary Views and answering the questions posed throughout this supplement.

WHAT IS THE PURPOSE OF THIS SUPPLEMENT?

To help achieve its mission of setting accounting standards that result in information that is useful for making decisions, the GASB makes a concerted effort to communicate with the public in a more understandable and broadly accessible manner. In particular, the GASB occasionally uses "plain-language" supplements in conjunction with its due process documents.

This document is a plain-language supplement that accompanies a Preliminary Views discussing potential changes to the GASB's existing standards for pensions—*Pension Accounting and Financial Reporting by Employers*. The intention of this plain-language supplement is to make it easier for you to participate knowledgeably in the GASB's standards-setting activities. This supplement attempts to achieve this goal by (1) presenting the issues with as little of the Preliminary View's technical and implementation-oriented vocabulary as possible and (2) focusing on the impact the issues may have on the information you find in government financial statements. This supplement focuses on situations that most typically occur and does not address certain circumstances that are less common. The complete discussion of the issues can be found in the Preliminary Views, which should be read in conjunction with this supplement.

The GASB hopes that, as a result of its efforts to present these issues in less technical language, more users of governmental financial information will respond. The GASB will consider this feedback, and that expressed in three public hearings, during its future deliberations on the pension standards.

HOW CAN YOU SHARE YOUR OPINIONS WITH THE GASB?

It is essential to the Board to receive feedback from users like you, in response to the questions presented above. You may also wish to address other issues raised in the Preliminary Views. (*Preparers and auditors of financial statements and actuaries are requested to answer the questions posed in the Preliminary Views rather than the questions in this supplement.*)

If you would like to submit written comments to the GASB about the views expressed in this document, there are two ways you may do so:

- By email—send your comments to director@gasb.org
- By traditional mail—include your comments in a letter and mail to:

Director of Research and Technical Activities
Project No. 34
Governmental Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

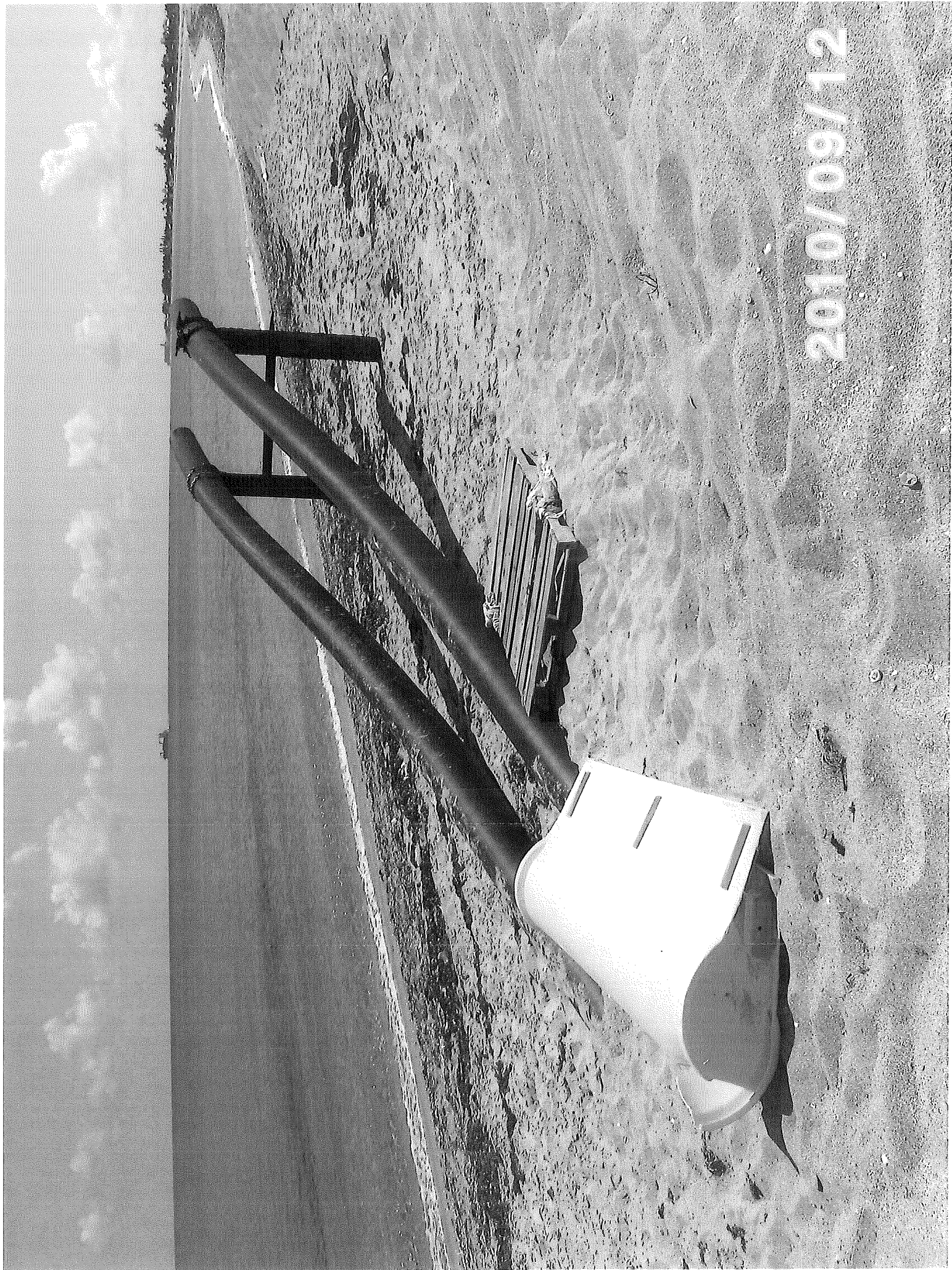
Submissions are requested by September 17, 2010.

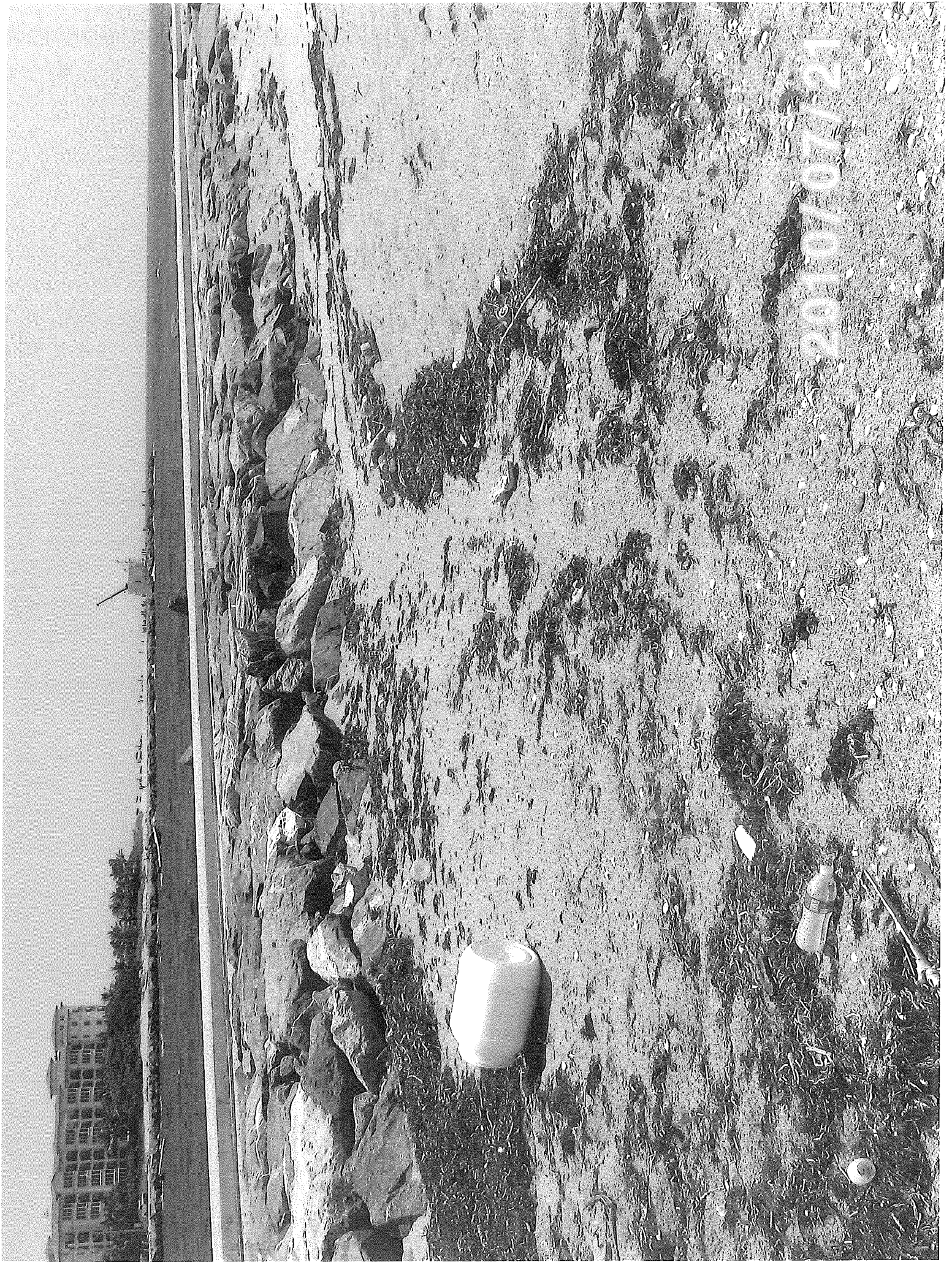
The GASB has scheduled three public hearings at locations around the country:

- October 13, 2010 in Dallas, Texas
- October 14, 2010 in San Francisco, California
- October 27, 2010 in New York City.

If you wish to speak at a hearing, you should notify the GASB of your intent in writing and submit a copy of your comments, using the address above, no later than September 17, 2010. You can testify in person or via telephone. Please read the participation requirements in the notice of public hearing in the Preliminary Views.

2010/09/12

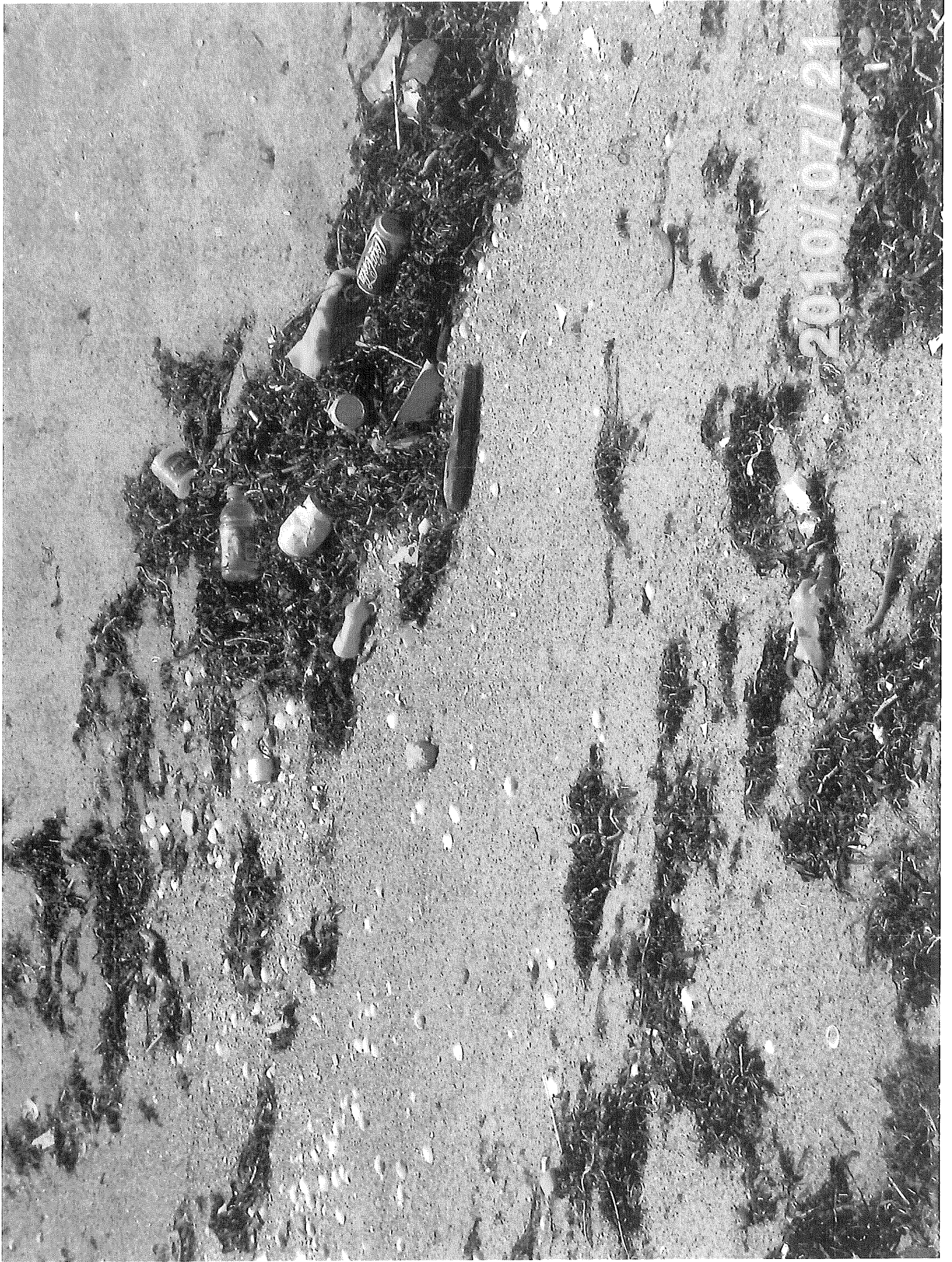




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