

Town of Lauderdale-By-The-Sea

Regular Town Commission

Agenda

Tuesday, November 12, 2024

6:30 PM



Jarvis Hall 4505 N. Ocean Drive
www.Lauderdalebythesea-fl.gov

LAUDERDALE-BY-THE-SEA TOWN COMMISSION

Mayor Edmund Malkoon
Vice Mayor Randy Strauss
Commissioner Richard DeNapoli
Commissioner John A. Graziano
Commissioner Theo Pouloupoulos

Linda Connors, Town Manager
Susan Trevarthen, Town Attorney
Katrina Adler, Town Clerk

Regular Town Commission

Tuesday, November 12, 2024, 6:30 PM
Jarvis Hall 4505 N. Ocean Drive

1. **CALL TO ORDER, MAYOR EDMUND MALKOON**
2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **INVOCATION by Father Peter Zougras**
4. **ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS**
5. **PRESENTATIONS**
 - 5.a. Fall Event Recap
6. **PUBLIC COMMENTS**
7. **PUBLIC SAFETY DISCUSSION**
 - 7.a. BSO October 2024 Public Safety Report
 - 7.b. PBFR October 2024 Public Safety Report
8. **TOWN MANAGER REPORT**
 - 8.a. Town Manager Report
9. **TOWN ATTORNEY REPORT**
10. **APPROVAL OF MINUTES**
 - 10.a. Approval of minutes for October 22, 2024 Regular Commission Meeting
11. **CONSENT AGENDA**
12. **OLD BUSINESS**
 - 12.a. 75th Anniversary Garden
 - 12.b. Circuit Funding Discussion
 - 12.c. Friday Night Music
13. **NEW BUSINESS**
 - 13.a. Special Event Application: Feast of the Holy Epiphany 01.06.25
14. **COMMISSIONER PRESENTATIONS**
15. **COMMISSIONER COMMENTS**
16. **ORDINANCES 1st Reading**
17. **ORDINANCES 2nd Reading**

18. RESOLUTIONS – PUBLIC COMMENTS

- 18.a.** RESOLUTION 2024-49 - A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A NON-EXCLUSIVE REVOCABLE LICENSE AGREEMENT WITH THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE, INC. FOR THE USE OF THE TOWN FACILITY LOCATED AT 4201 NORTH OCEAN DRIVE; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.
- 18.b.** RESOLUTION NO. 2024-50 - A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA AUTHORIZING A REVOLVING LINE OF CREDIT AND PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$4,000,000 TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA TAXABLE REVENUE NOTE, SERIES 2024, FOR THE PURPOSE OF FINANCING EXPENSES RELATED TO NATURAL DISASTERS INCLUDING HURRICANES AND OTHER EMERGENCIES OF THE TOWN AND PAYING COSTS OF ISSUANCE NECESSARY AND INCIDENTAL THERETO; APPROVING THE FORM OF REVENUE NOTE, SERIES 2024, AND A REVOLVING LOAN AGREEMENT; PROVIDING OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.
- 18.c.** RESOLUTION 2024-51 - A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A ROW AGREEMENT WITH FLORIDA POWER & LIGHT FOR THE UNDERGROUND CONVERSION OF CERTAIN OVERHEAD ELECTRIC DISTRIBUTION FACILITIES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.
- 18.d.** RESOLUTION 2024-60- A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A DEVELOPER AGREEMENT WITH SKY 360 DEVELOPMENT, LLC. FOR THE REIMBURSEMENT OF COSTS INCURRED AND ASSOCIATED WITH THE UNDERGROUND CONVERSION OF CERTAIN OVERHEAD ELECTRIC DISTRIBUTION FACILITIES WITHIN THE TOWN'S ROW; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DEVELOPER AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.
- 18.e.** RESOLUTION 2024-52 - A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PIGGYBACK AGREEMENT WITH JANICE M. RILEY INC. DBA THE PAVING LADY FOR PAVEMENT RESURFACING SERVICES UTILIZING THE TERMS AND CONDITIONS OF THE AVENTURA CONTRACT AWARDED PURSUANT TO INVITATION TO BID NO. 20-03-19-3; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PIGGYBACK AGREEMENT; PROVIDING FOR IMPLEMENTATION AND FOR AN EFFECTIVE DATE.
- 18.f.** Continuing Professional Services Contracts
RESOLUTION 2024-53: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH FLYNN ENGINEERING SERVICES, P.A. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-54: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH BAXTER & WOODMAN, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-55: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING, LANDSCAPE ARCHITECTURE, AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-56: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CAULFIELD & WHEELER, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING, LANDSCAPE ARCHITECTURE, SURVEY AND MAPPING, AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-57: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CARNAHAN, PROCTOR AND CROSS, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING, LANDSCAPE ARCHITECTURE, SURVEY AND MAPPING, AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-58: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WALTERS ZACKRIA ASSOCIATES, PLLC PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ARCHITECTURE SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-59: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HITCHCOCK DESIGN GROUP INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL LANDSCAPE ARCHITECTURE SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

19. QUASI JUDICIAL PUBLIC HEARINGS

20. ADJOURNMENT

SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 640-4200 FOR ASSISTANCE.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PROCEDURES FOR PUBLIC COMMENTS:

Public Comments may address issues that are not on this meeting's agenda, but should relate to the business of the Town, and should not contain personal attacks. If your comment requires follow up, the Town Manager will have a staff person respond to your concerns, and will advise us of the outcome.

The Town Clerk will read off the names of those who have signed up to speak. When your name is called, please come to the podium, state your name for the record, and indicate whether you are a Town resident. Do not state your address. You have up to three minutes to make your comments, but there is no requirement to use the entire time. If you wish to address a particular Commissioner or member of Town Administration, please do so by use of their title.

If you wish to approach the Commission dais to hand out a document or for some other reason, please request permission and state your reason for doing so. All documents to be provided to the Commission should be handed to the Town Clerk for distribution.

These procedures have been developed to assure that the Town Commission meeting time is efficiently used, and that meetings are conducted in a polite and respectful manner. More information on the decorum rules for Town Commission meetings is available in Section 2-23 of the Town Code of Ordinances.

INVOCATION:

The Invocation before each Town Commission meeting is a voluntary service of a private citizen, offered to serve the spiritual needs of the members of the Town Commission and solemnize the meeting. It is not intended to be an opportunity to advance or disparage one faith or belief over another. The views expressed in the Invocation have not been previously reviewed by the Town and do not necessarily represent the beliefs of any Town employee or official. No person is required to be present at or participate in the Invocation, and the decision whether to be present or participate in the Invocation will not affect any person's right to actively participate in the official business of the Town or obtain any benefit from the Town. The Town's written Invocation policy is available on its website, and upon written request to the Town Clerk.all static



Agenda Item No: 5.a.

Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Katie Anderson, Special Events and Community Marketing Coordinator

Submitting Department: Administration

Item Type: Presentations

Agenda Section: PRESENTATIONS

Subject Title: Fall Event Recap

Explanation: Katie Anderson, Marketing and Events Manager, will recap the Boo By The Sea and Founders Day picnic events.

Recommendation: N/A

Exhibits: None



Agenda Item No: 7.a.

Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: William Wesolowski, Captain, Broward County Sheriff's Office

Submitting Department: Administration

Item Type: Public Safety Discussion

Agenda Section: PUBLIC SAFETY DISCUSSION

Subject Title: BSO October 2024 Public Safety Report

Explanation: BSO October 2024 report prepared by Captain William Wesolowski.

Recommendation: Accept/Approve

Exhibits:

1. BSO October 2024 Report



Sheriff Gregory Tony, Ph.D.

Date: November 5, 2024

To: Linda Connors
Town Manager

From: Captain William Wesolowski
Commander, Lauderdale by the Sea District

Subject: BSO Public Safety Report- October 2024

PERSONNEL CHANGES:

On 10-19-24, Deputy Robert Barnett was assigned to the Lauderdale by the Sea District from the Tamarac District.

EMPLOYEE OF THE MONTH: Deputy Joao Claudio Reis

As the Broward Sheriff's Office Lauderdale by the Sea District Homeless Outreach Deputy, Deputy Joao Claudio Reis has assisted many persons with their basic needs such as food, clothing, and shelter. He oftentimes makes the selfless sacrifice of providing his own funds to some of the most vulnerable people who request and need assistance. Deputy Reis does not always hear about the success or nonsuccess of the people he helps; however, the following is an example of a successful interaction involving a homeless person who Deputy Reis assisted back on May 1st, 2024.

A thirty-four-year-old homeless male, named Bradley had made his way to South Florida from South Carolina. Deputy Reis made contact with Bradley here in the Town of Lauderdale by the Sea during the afternoon hours. Bradley at first declined services or assistance, however, Deputy Reis saw a lost soul and decided to speak with him further about the opportunities of life and moving forward from the past. Unbeknownst to Deputy Reis, Bradley was moved by this talk and accepted Deputy Reis' assistance. However, another barrier took place when Deputy Reis made contact Bradley's mother in South Carolina, who declined to accept him back because he always reverts to trouble and refuses to move forward. Deputy Reis was able to convince Bradley's mother to give her son another chance and she agreed to send him money for a bus ticket back to South Carolina. Bradley's mother did not, however want to see her son when he returned to

South Carolina because it was always too painful to watch him fail. Deputy Reis provided Bradley with a meal and transported him to the bus station, so he could return home. During this encounter, Deputy Reis continued to show Bradley humanity and his belief in him to succeed, change, and move forward. Bradley returned home, and Deputy Reis continued to perform his daily duties.

In October, Deputy Reis received a phone call from an unknown number. The caller identified herself as Bradley's mother and she wanted to thank Deputy Reis for believing in her son and putting him on the right path to success. She explained that as she had requested, she had not seen Bradley since he had returned to South Carolina. On a recent Sunday, Bradley's mother observed a cleaned-up Bradley in church giving thanks to God. She soon learned that after arriving in South Carolina from Florida, her son had checked himself into a rehabilitation center, cleaned up, joined a church volunteer group, obtained a job, and was currently in school to become a welder. She believed that God himself had used Deputy Reis to convince her son to move onto the righteous path of humanity and success and wanted Deputy Reis to know that his work matters. Deputy Reis was so moved by this phone call that he broke into tears and had to explain to his wife what he had just learned.

For this, and the many other duties Deputy Joao Claudio Reis conducts with compassion and professionalism, Deputy Reis is awarded the Broward Sheriff's Office Lauderdale by the Sea District Employee of the Month for October 2024.

COMMUNITY PROGRAMS AND SERVICES: These ancillary programs and services are available to residents on an ongoing basis.

- **Elder Links:** This program offers referral services to elderly residents and other senior citizens in need of medical and mental health care, meal delivery or other social services.
- **Business and Residential Security Surveys:** The Business and Residential Security Survey program teaches participants to secure their business, home or condominium to reduce the likelihood of burglary and theft. Security surveys, conducted by a certified law enforcement security specialist, are provided upon request, at no charge to the business owner or resident.
- **Vacation House Watch Program:** Residents who are traveling out-of-town may register for this program. Deputies will conduct periodic checks of their residence until their return.
- **Neighborhood Crime Prevention Program:** The Neighborhood Crime Prevention program liaison organizes and conducts crime prevention and security seminars at the request of neighborhood civic and condominium associations. We will also help facilitate any Neighborhood Crime Watch programs in which the residents wish to participate.
- **Identity Theft and Scam Prevention Program:** The Identity Theft and Scam Prevention program is designed to inform residents about identity theft and how to lessen their chances of becoming a victim of a scam. Residents are informed on the importance

of shredding documents, awareness of suspicious individuals, protection of passwords and use of caution in revealing information. Our Shred-A-Thon to reduce identity theft event is incorporated into this program.

- **Enhanced Marine Law Enforcement Patrol Program:** The BSO Marine Patrol Unit participates in the Enhanced Marine Law Enforcement Grant on behalf of Lauderdale-by-the-Sea. This grant allows for additional maritime patrols throughout the Town's waterways and adjacent ocean area.
- **Citizen Observer Patrol (COP) Program:** COP volunteers are local residents who receive public safety training. They are a tremendous asset to the Town of Lauderdale-by-the-Sea. COP members alternate assisting in administrative duties or patrolling local neighborhoods as an extra pair of eyes and ears to supplement deputy sheriff patrols. COP members also attend monthly patrol information and criminal intelligence briefings. A summary of COP statistical activity is included at the end of this report.
- **Sexual Offender Tracking Program:** There are **no** individuals legally classified as a sexual offender residing within Town limits. The sex offender database is routinely checked by BSO to ensure compliance with State of Florida legal mandates. Existing municipal ordinances prohibit persons classified as sexual offenders or sexual predators from residing within Town limits.
- **Bicycle Patrol:** Deputies utilize specialized patrol bicycles to enhance public safety and community outreach. This mode of patrol allows the deputies to interact one-on-one with our residents and visitors. Deputies conducted 0 hrs. of bike patrol.
- **All-Terrain Vehicle Patrol:** The ATV / Polaris are primarily utilized on the beach areas in order to conduct patrols to deter criminal activity and maintain the security of the beach-area properties. The ATV patrol is instrumental in marine fisheries regulation enforcement and protection. Deputies used the ATV / Polaris for 80 miles and 10 hours this month.
- **Crisis Intervention Team / Homeless Outreach Team Programs:** The C.I.T. / H.O.T. program is comprised of specially trained patrol deputies and supervisors who are able to intervene in situations involving persons with mental illness or are otherwise experiencing mental health crises or are homeless and in need of services. Two (2) individuals were experiencing a mental health crises and were Baker Acted. Four (4) individuals experiencing homelessness were contacted during this period. All four individuals refused services.
- **Automated License Plate Reader Camera System:** The ALPR system installation was completed in October 2014. The system is proving to be an effective tool to Public Safety. **See Notable Incidents/Arrests below.**
- **e – Alerts:** This information initiative allows Town residents to stay informed, via email or text messages, of important topics such as criminal activity, traffic information, upcoming events, security issues and other important public safety information throughout Broward County and Lauderdale-by-the-Sea. Residents can register for this program through either the Lauderdale-by-the-Sea or the Broward Sheriff's Office internet website @ www.sheriff.org .

- **Electronic Message Board:** The BSO Lauderdale-by-the-Sea district continues to utilize the electronic traffic safety message board at various locations within the Town. This allows the district to alert residents about any traffic problems and other important public safety issues impacting them.
- **SaferWatch:** SaferWatch is an application (app) that gives citizens the power to record or report non-emergency incidents as they happen. It provides another option to the “If you see something, say something” message and allows individuals that “If you see something, SEND something” via a mobile application (app) from your smartphone.
- **TWITTER:** The Broward Sheriff's Office has provided an official Twitter account to Captain Wesolowski and Lieutenant Sutter to provide information to the public via social media. Follow us **@BSOLBTS**.

SPECIAL EVENTS: These events required the participation of the BSO LBTS district.

On Wednesday, October 2, 2024, the Broward Sheriff's Office Lauderdale by the Sea District participated in the annual Coffee With A Cop event. The event was held at the Village Grill and was attended by between 30 and 35 residents, business owners, and visitors. Captain Wesolowski and Lt. Sutter attended.

On Saturday, October 26, 2024, the town hosted the annual Boo by the Sea event. The Broward Sheriff's Office Lauderdale by the Sea District along with the Broward Sheriff's Office Neighborhood Support Team manned the district tent and prize wheel providing giveaways to the attendees. The SWAT BEAR Truck and District UTV were utilized as static displays for photographs. Broward Sheriff's Office personnel provided pedestrian and vehicular traffic control for the event. There were approximately 2,500 attendees. Captain Wesolowski and Lt. Sutter attended.

NOTABLE INCIDENTS / ARRESTS:

CASE: 13-2410-000214 (Deputy Swadkins)

DATE/TIME: 10/10/2024 @ 1556 HRS

LOCATION: 2 Palm Ave

REPORTER: Savannah Fisher, WF DOB 06-28-98

VICTIM: TBA

INCIDENT: Theft – Bicycle

SUMMARY: Deputy Swadkins was flagged down by the victim in reference to a bicycle theft. The reporter indicated her daughters laid down two matching bicycles, which belonged to the Airbnb she is renting, and went to the beach. When they returned, they learned that unknown suspect(s) stole the two bicycles. The town cameras captured two W/M adult suspects taking the two bicycles at 1526 hours and riding off NB on El Mar Drive.

CASE: 13-2410-0000271 (Deputy Yates)
DATE/TIME: 10/12/24 2200 HRS to 10/13/24 1000 HRS
LOCATION: 4560 W. Tradewinds Ave.
VICTIM: Robert C. Haynes, W/M, 5/26/62
VEHICLE: White Ford F-150 (Victim's vehicle)
INCIDENT: Burglary Conveyance
SUMMARY: Deputy met with the victim, Robert Haynes who reported that his vehicle was burglarized overnight. Items stolen from the console were a Taurus, Model 85 .38 revolver (S/N) KB77023. The handgun was black with wooden grips. Also stolen was a Truist Bank checkbook containing several blank checks bearing the victim's name. There were no signs of forced entry and the victim discovered he left his doors unlocked. A Ring Doorbell mounted at the front of the residence did not reveal the suspect, however, footage showed the vehicle's back lights were on at 0121 HRS. The firearm was entered into FCIC / NCIC, and a Theft Affidavit was signed.

CASE: 13-2410-000277 (Deputy Suarez)
DATE/TIME: 10/13/24 @ 1940 Hrs.
LOCATION: 4319 N Ocean Dr (Walgreens)
SUBJECT: Tyler James Woods (W/M, DOB: 2/15/2002)
VICTIM: Walgreens
INCIDENT: Petit Theft
SUMMARY: Subject Woods entered the Walgreens and told the manager that he was going to steal Preparation H because he didn't have any money. The subject then entered the store and walked out. The manager then discovered an empty Preparation H box. No one saw the subject take the item and the surveillance camera didn't capture the subject taking the item. As Deputy Suarez was taking the report, Subject Woods approached him and admitted to stealing the Preparation H. Walgreens did not wish to prosecute. Trespass order given. The Subject stated he wanted to go to Broward Health Imperial Point Mental Health Facility for psychological assistance as he suffers from Bi-Polar, ADHD and schizophrenia. Deputy Suarez transported the subject to Broward Health Imperial Point Mental Health Facility (Hospital) at which time he stated that he just wanted to see a doctor for his hemorrhoids. Subject was released.

CASE: 13-2410-000450 (Deputy Suarez)
DATE/TIME: 10/21/24 @ 1705 hrs.
LOCATION: 4400 Blk of W. Tradewinds Av
SUBJECT: AKA: Chocolate
VICTIM: Wilson, Ayliana Alaysia (B/F, DOB: 3/11/2000)
INCIDENT: Simple Battery
SUMMARY: Deputy met with the victim of an assault in the 4400 BLK of W. Tradewinds Ave. The victim stated that she had been slapped by a B/F named Chocolate she had met the night before. The subject was accompanied by an unknown B/M, and they were staying at the Dee Jay Beach Resort. They were all driving in the victim's vehicle which broke down on Commercial. They started walking back to the hotel when the subject became upset and slapped the victim. A witness went to the aid of the victim and both the subject and B/M fled the area. The Victim did not wish to prosecute and signed a Waiver of Prosecution. Victim was escorted back to the motel to retrieve her belongings.

CASE: 3-2410-000471 (Dep Bickel)
DATE/TIME: 08/24/24 to 10/22/24
LOCATION: 1770 S Ocean Blvd #707
VICTIM: Ann Marie Quigley, WF, DOB:12/10/45
INCIDENT: Fraud-Impersonation
SUMMARY: The victim reported she was the victim of a scam by unknown fraudulent actors who duped her into withdrawing funds from her bank account. She then submitted \$49,000 of her funds to Bitcoin, and another \$48,000 in gold purchases. An unknown suspect traveled to her residence and under pretense took possession of the gold. At this time there is no information identifying the suspects. The scam began when the victim received an audible alert on her IPAD tablet stating that the device was compromised, and monies had to be submitted for her bank account to be secured. At no time did the victim ever question the validity of the incident by contacting the bank.

CASE: 13-2410-000538 (Deputy Ramcharan)
DATE/TIME: 10/24/2024 @ 1420 HRS
LOCATION: 5000 N Ocean Drive
VICTIM: Theodosia Lembessis WF 02/27/1946
VEHICLE: Lift Courier Service
INCIDENT: Grand Theft
SUMMARY: Deputies responded to the listed location in reference to an elderly victim who was scammed of \$9,000. The victim was called by the unknown suspect who stated he was an attorney, and her son was involved in a crash and needed \$9,000 to bond out of jail. The victim responded to the bank and withdrew the 9k from the bank and then later met with a person in the parking lot of her residence. The victim then handed this unknown person the money. The unknown suspect contacted the victim again later this same date and again attempted to arrange for the victim to withdraw another 9k. This time BSO was contacted, and Deputies were dispatched. Det. Koos also responded, and arrangements were made for the suspect to return to the scene to pick up the additional money in a black vehicle. When the vehicle arrived, a traffic stop was initiated, and the driver was a courier for Lyft services. This driver was to pick up the package (Cash) and drive it to Orlando. Investigation continuing.

MONTHLY ARREST LOGS:

Misd/Fel	Charge	Street
Fel	False Imprisonment/Battery Over 65	4 Sunset Lane
Fel	Grand Theft	110 Commercial

CRIME STATISTICS:

CRIME	CURRENT MONTH	PRIOR MONTH	2023 YTD	2024 YTD
AUTO THEFT	0	0	14	6
BURGLARY-BUSINESS	0	0	3	2
BURGLARY-CONVEYANCE	1	1	18	14
BURGLARY-RESIDENCE	0	0	6	2
BURGLARY-STRUCTURE	0	0	1	0
FORCIBLE SEX	0	0	0	1
ARSON	0	0	0	0
ASSAULT-AGGRAVATED	0	0	5	3
HOMICIDE	0	0	0	0
ROBBERY	0	0	0	2
THEFT-GRAND	1	0	27	15
THEFT-PETIT	2	3	32	34
TOTALS	4	4	106	79

CITIZEN OBSERVER PATROL STATISTICAL SUMMARY:

COP Activity	Total
Number of Volunteers	28
COP Hours Worked - Month	86
COP Patrol Miles - Month	157
COP Hours Worked - YTD	669
COP Patrol Miles - YTD	1,418

COP Bike Patrol Hours - Month	8
COP Bike Patrol Hours - YTD	21

COP Beach Patrol Hours – Month	5
COP Beach Patrol Hours - YTD	110.5

RESERVE DEPUTY ASSISTANCE: Reserve Deputies are part-time, fully sworn deputies who provide supplemental staffing to LBTS, when available, at NO cost to the Town.

	Month	2024 YTD
Reserve Deputy - Days Worked	7	42
Reserve Deputy - Hours Worked	52	365.5

MONTHLY STAFFING AND STATISTICAL REPORT:

The October 2024 Monthly Staffing and Statistical Report is attached.



**MONTHLY STAFFING AND STATISTICAL REPORT
LAUDERDALE-BY-THE-SEA DISTRICT**

October 31, 2024

CURRENT STAFFING ALLOCATIONS

Position	Budgeted Positions	Actual Positions	Vacant Positions
District Chief	1	1	
Executive Lieutenant	1	1	
Sergeant	4	4	
Deputy Sheriff	19	19	
Community Service Aide	1	1	
Administrative Specialist	1	1	
Clerical Specialist (P/T)	1	1	
TOTAL	28	28	

PERSONNEL ON LIGHT DUTY, PROMOTED, TRANSFERRED, ETC.

Name	CCN	Status	Circumstances
Deputy Robert Barnett	8186	Assigned to D13	Transferred in from D7
Deputy Jeffrey Bickel	15551	Light Duty	Medical

DETACHED PERSONNEL / LOCATION

Name	CCN	Detached to	Reason	Hours
			TOTAL	0



Lauderdale by the Sea

Monthly Activity

OCTOBER 2024

Reports/Calls		Traffic	
Miscellaneous Service		Types of Citation	
Event Reports	26	Non-Moving / Moving Citation	119
Accidents	1	Parking	0
Calls for Service	707	Warnings	112
		Total Citations	231
Arrests		Time Worked	
Type of Arrest		Hours Worked	
Felony	1	Bike Patrol	3
Misdemeanor	0	Court Overtime	9
Warrant (Felony)	0	Training Hours	65
Warrant (Misd.)	0	Detached	0
DUI (Felony)	0	Other Overtime	101
DUI (Misdemeanor)	0	Days Worked	31
NIC (Felony)	0		
NIC (Misdemeanor)	0		
DV (Felony)	0		
DV (Misd.)	0		
Total Arrests	1		
General		Narrative	
FI	6	ATV/UTV: 80 Miles / 10 Hours Reserve Deputies worked 7 shifts (52 hrs)	
Truant	0		
Truant Debriefed	0		
Elder Link	0		



Agenda Item No: 7.b.

Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Ashley Zalewski, Fire Inspector Ashley Zalewski

Submitting Department: Administration

Item Type: Public Safety Discussion

Agenda Section: PUBLIC SAFETY DISCUSSION

Subject Title: PBFR October 2024 Public Safety Report

Explanation: PBFR October 2024 report prepared by Fire Inspector Ashley Zalewski.

Recommendation: Accept/Approve

Exhibits:

1. PBFR October 2024 Report



POMPANO BEACH
FIRE RESCUE
Bureau of Fire Prevention

100 West Atlantic
Boulevard Room 220
Pompano Beach, FL
33060 Office
954•786•4695
Fax 954•786•4328

TO: LINDA CONNORS, TOWN MANAGER

FROM: ASHLEY ZALEWSKI

SUBJECT: PBFR PUBLIC SAFETY REPORT – OCTOBER 2024

CC: PETE MCGINNIS

Below are the resident complaints for the month of October: 0

Below are the public education events that were held during the month of October:

- Community Event- 1- Boo by the Sea

Plan Reviews and Fees:

Plans Examiner Zalewski reports the below statistical data for the month of October:

Type	Amount/Number
Plans Reviewed	5
Square Footage	103,823
Plan Review Revision Fee	\$0.00
Fire/Rescue Fee	\$0.00
Total Project Cost	\$8,170,318.28
PBFR Plan Review Fee	\$40,851.59
PBFR Tech Fee	\$817.03
New Constructions	13
Annual Inspections	10
Meetings	10

Plan Type	Plans Reviewed
30- Apartments	4
90- Site Plan	1
Grand Total	5

Complaints & Notice of Violation:

Plans Examiner Zalewski reports that Complaints for the month of October:

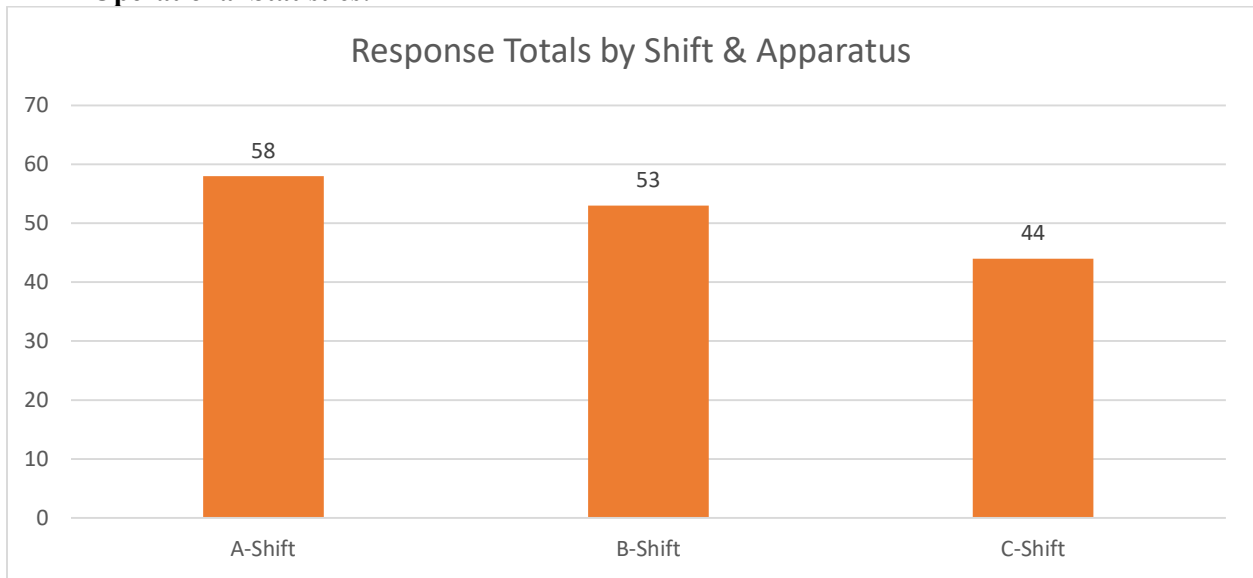
	Assigned	On Going	Completed
10/01/2024 through 10/31/24	0	0	0

Below are the Fire Incidents for the Month of October 2024.

Part III- Breakdown of Fires (Incident Type 110-129)

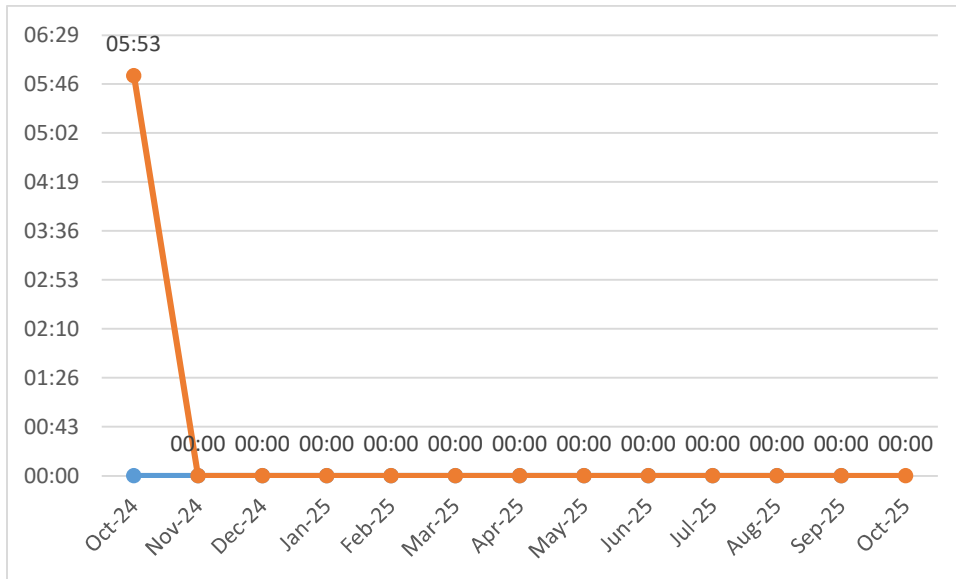
Structure Fires	Estimated Property Loss	Civilian Casualty	Civilian Deaths	Total
Structure Fires	Estimated Property Loss	Civilian Casualty	Civilian Deaths	Total
02 - Residential - Apartments	\$0.00	0	0	0
04 - Other Residential	\$0.00	0	0	0
06 - Public Assembly	\$0.00	0	0	0
09 - Stores and Offices	\$0.00	0	0	0
	Total Loss \$0.00			0

PBFR Operational Statistics:



Total call for month: 155

There are 3 shifts that work from 7:30a-7:30a. We have a 24 hr shift schedule.



Monthly Response Time Chart is an average of response times from time of dispatch to arrival on scene.

Station	C-	Q12	10/1/24 9:35	10/1/24 9:42	EMS call, excluding vehicle	0:06:44
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12	Shift		AM	AM	accident with injury	
Station 12	C-Shift	R12	10/1/24 10:23 AM	10/1/24 10:38 AM	EMS call, excluding vehicle accident with injury	0:14:21
Station 12	C-Shift	R12	10/1/24 3:06 PM	10/1/24 3:12 PM	EMS call, excluding vehicle accident with injury	0:06:04
Station 12	C-Shift	Q12	10/1/24 6:13 PM	10/1/24 6:19 PM	EMS call, excluding vehicle accident with injury	0:06:11
Station 12	C-Shift	R12	10/1/24 6:13 PM	10/1/24 6:17 PM	EMS call, excluding vehicle accident with injury	0:04:45
Station 12	C-Shift	R12	10/1/24 7:28 PM	10/1/24 7:33 PM	EMS call, excluding vehicle accident with injury	0:04:40
Station 12	A-Shift	Q12	10/2/24 7:29 AM	10/2/24 7:35 AM	Assist invalid	0:06:21
Station 12	A-Shift	R2114*	10/2/24 9:54 AM	10/2/24 9:59 AM	EMS call, excluding vehicle accident with injury	0:05:54
Station 12	A-Shift	R12	10/2/24 10:58 AM	10/2/24 11:02 AM	EMS call, excluding vehicle accident with injury	0:04:13
Station 12	A-Shift	R12	10/2/24 4:39 PM	10/2/24 4:41 PM	EMS call, excluding vehicle accident with injury	0:01:56
Station 12	A-Shift	P11*	10/2/24 7:59 PM	10/2/24 8:06 PM	EMS call, excluding vehicle accident with injury	0:07:28
Station 12	A-Shift	R11*	10/2/24 7:59 PM	10/2/24 8:06 PM	EMS call, excluding vehicle accident with injury	0:06:54
Station 12	B-Shift	P11*	10/3/24 11:22 AM	10/3/24 11:27 AM	EMS call, excluding vehicle accident with injury	0:04:48
Station 12	B-Shift	R12	10/3/24 11:22 AM	10/3/24 11:30 AM	EMS call, excluding vehicle accident with injury	0:08:16
Station 12	B-Shift	R12	10/3/24 7:44 PM	10/3/24 7:48 PM	EMS call, excluding vehicle accident with injury	0:04:21
Station 12	B-Shift	R12	10/4/24 4:19 AM	10/4/24 4:25 AM	EMS call, excluding vehicle accident with injury	0:06:37
Station 12	C-Shift	R12	10/4/24 4:41 PM	10/4/24 4:45 PM	EMS call, excluding vehicle accident with injury	0:04:22
Station 12	C-Shift	R12	10/4/24 6:35 PM	10/4/24 6:41 PM	EMS call, excluding vehicle accident with injury	0:06:14
Station 12	C-Shift	R12	10/4/24 7:36 PM	10/4/24 7:40 PM	EMS call, excluding vehicle accident with injury	0:03:55
Station 12	C-Shift	R114*	10/4/24 7:37 PM	10/4/24 7:39 PM	EMS call, excluding vehicle accident with injury	0:01:04
Station 12	C-Shift	R12	10/4/24 8:24 PM	10/4/24 8:31 PM	EMS call, excluding vehicle accident with injury	0:06:11
Station 12	C-Shift	R12	10/5/24 12:03 AM	10/5/24 12:05 AM	EMS call, excluding vehicle accident with injury	0:01:24
Station 12	C-Shift	R12	10/5/24 12:37 AM	10/5/24 12:54 AM	EMS call, excluding vehicle accident with injury	0:16:55
Station 12	C-Shift	Q12	10/5/24 1:00 AM	10/5/24 1:07 AM	Removal of victim(s) from stalled elevator	0:07:02
Station 12	A-Shift	Q12	10/5/24 2:00 PM	10/5/24 2:09 PM	Removal of victim(s) from stalled elevator	0:08:29
Station 12	A-Shift	R12	10/5/24 5:14 PM	10/5/24 5:18 PM	EMS call, excluding vehicle accident with injury	0:03:27
Station 12	A-Shift	Q12	10/5/24 5:42 PM	10/5/24 5:45 PM	Assist invalid	0:03:12
Station 12	A-Shift	Q12	10/5/24 6:42 PM	10/5/24 6:49 PM	Heat detector activation due to malfunction	0:07:43
Station	A-	R12	10/6/24 1:24	10/6/24 1:30	EMS call, excluding vehicle	0:05:35

12	Shift		AM	AM	accident with injury	
Station 12	A-Shift	Q12	10/6/24 4:31 AM	10/6/24 4:43 AM	Smoke detector activation due to malfunction	0:12:02
Station 12	B-Shift	R12	10/6/24 10:59 AM	10/6/24 11:04 AM	EMS call, excluding vehicle accident with injury	0:05:08
Station 12	B-Shift	R12	10/6/24 11:44 AM	10/6/24 11:45 AM	EMS call, excluding vehicle accident with injury	0:00:15
Station 12	B-Shift	R12	10/6/24 3:24 PM	10/6/24 3:29 PM	EMS call, excluding vehicle accident with injury	0:05:53
Station 12	B-Shift	R12	10/6/24 4:29 PM	10/6/24 4:35 PM	EMS call, excluding vehicle accident with injury	0:05:26
Station 12	C-Shift	Q12	10/7/24 8:48 AM	10/7/24 8:53 AM	No incident found on arrival at dispatch address	0:04:22
Station 12	C-Shift	R12	10/7/24 1:27 PM	10/7/24 1:38 PM	EMS call, excluding vehicle accident with injury	0:11:18
Station 12	A-Shift	P11*	10/8/24 1:33 PM	10/8/24 1:44 PM	No incident found on arrival at dispatch address	0:10:27
Station 12	A-Shift	Q12	10/8/24 10:09 PM	10/8/24 10:16 PM	Alarm system activation, no fire - unintentional	0:06:46
Station 12	A-Shift	R12	10/8/24 10:34 PM	10/8/24 10:39 PM	EMS call, excluding vehicle accident with injury	0:05:35
Station 12	A-Shift	R12	10/8/24 10:34 PM	10/8/24 10:39 PM	EMS call, excluding vehicle accident with injury	0:05:35
Station 12	A-Shift	Q12	10/9/24 2:59 AM	10/9/24 3:08 AM	Smoke detector activation due to malfunction	0:08:58
Station 12	B-Shift	Q12	10/9/24 10:53 AM	10/9/24 10:56 AM	Alarm system sounded due to malfunction	0:03:11
Station 12	B-Shift	Q12	10/9/24 12:15 PM	10/9/24 12:18 PM	Alarm system activation, no fire - unintentional	0:02:50
Station 12	B-Shift	R12	10/9/24 8:32 PM	10/9/24 8:40 PM	EMS call, excluding vehicle accident with injury	0:08:48
Station 12	B-Shift	R12	10/10/24 12:59 AM	10/10/24 1:06 AM	EMS call, excluding vehicle accident with injury	0:07:12
Station 12	B-Shift	R12	10/10/24 5:26 AM	10/10/24 5:35 AM	EMS call, excluding vehicle accident with injury	0:09:08
Station 12	C-Shift	R12	10/10/24 10:20 AM	10/10/24 10:25 AM	EMS call, excluding vehicle accident with injury	0:05:38
Station 12	C-Shift	R12	10/10/24 12:33 PM	10/10/24 12:37 PM	EMS call, excluding vehicle accident with injury	0:04:22
Station 12	C-Shift	R12	10/10/24 3:07 PM	10/10/24 3:13 PM	EMS call, excluding vehicle accident with injury	0:05:30
Station 12	C-Shift	R12	10/10/24 11:07 PM	10/10/24 11:15 PM	EMS call, excluding vehicle accident with injury	0:08:37
Station 12	C-Shift	R12	10/11/24 4:07 AM	10/11/24 4:14 AM	EMS call, excluding vehicle accident with injury	0:07:41
Station 12	C-Shift	R12	10/11/24 6:48 AM	10/11/24 6:53 AM	EMS call, excluding vehicle accident with injury	0:05:06
Station 12	A-Shift	Q12	10/11/24 11:23 AM	10/11/24 11:28 AM	Smoke detector activation, no fire - unintentional	0:05:38
Station 12	A-Shift	Q12	10/11/24 1:00 PM	10/11/24 1:00 PM	Animal rescue	0:00:13
Station 12	A-Shift	Q12	10/11/24 1:12 PM	10/11/24 1:18 PM	Smoke detector activation, no fire - unintentional	0:06:05
Station 12	A-Shift	Q12	10/11/24 3:23 PM	10/11/24 3:29 PM	Public service	0:06:16
Station	B-	Q12	10/11/24	10/11/24	EMS call, excluding vehicle	0:00:00

12	Shift		6:15 PM	6:15 PM	accident with injury	
Station 12	B-Shift	R12	10/11/24 6:15 PM	10/11/24 6:15 PM	EMS call, excluding vehicle accident with injury	0:00:00
Station 12	A-Shift	R12	10/11/24 7:51 PM	10/11/24 7:55 PM	EMS call, excluding vehicle accident with injury	0:03:37
Station 12	B-Shift	R12	10/12/24 7:26 AM	10/12/24 7:31 AM	EMS call, excluding vehicle accident with injury	0:04:42
Station 12	B-Shift	R12	10/12/24 8:41 AM	10/12/24 8:46 AM	EMS call, excluding vehicle accident with injury	0:04:53
Station 12	B-Shift	R12	10/12/24 8:41 AM	10/12/24 8:46 AM	EMS call, excluding vehicle accident with injury	0:04:53
Station 12	B-Shift	Q12	10/12/24 9:44 AM	10/12/24 9:52 AM	Smoke detector activation, no fire - unintentional	0:08:51
Station 12	B-Shift	Q12	10/12/24 10:26 AM	10/12/24 10:32 AM	Removal of victim(s) from stalled elevator	0:05:21
Station 12	B-Shift	Q12	10/12/24 10:37 AM	10/12/24 10:45 AM	Sprinkler activation, no fire - unintentional	0:07:39
Station 12	B-Shift	Q12	10/12/24 11:18 AM	10/12/24 11:23 AM	Smoke detector activation, no fire - unintentional	0:05:10
Station 12	B-Shift	R12	10/12/24 11:44 AM	10/12/24 11:49 AM	EMS call, excluding vehicle accident with injury	0:05:14
Station 12	B-Shift	R12	10/12/24 1:41 PM	10/12/24 1:44 PM	EMS call, excluding vehicle accident with injury	0:03:31
Station 12	B-Shift	Q12	10/12/24 3:33 PM	10/12/24 3:40 PM	Removal of victim(s) from stalled elevator	0:06:56
Station 12	B-Shift	R12	10/12/24 4:55 PM	10/12/24 4:59 PM	EMS call, excluding vehicle accident with injury	0:04:51
Station 12	B-Shift	R11*	10/12/24 5:26 PM	10/12/24 5:36 PM	EMS call, excluding vehicle accident with injury	0:09:31
Station 12	B-Shift	Q12	10/12/24 5:26 PM	10/12/24 5:33 PM	EMS call, excluding vehicle accident with injury	0:06:07
Station 12	B-Shift	R12	10/12/24 6:49 PM	10/12/24 6:53 PM	EMS call, excluding vehicle accident with injury	0:04:04
Station 12	B-Shift	Q12	10/13/24 7:04 AM	10/13/24 7:14 AM	Electrical wiring/equipment problem, other	0:10:47
Station 12	A-Shift	R12	10/13/24 10:25 AM	10/13/24 10:28 AM	No incident found on arrival at dispatch address	0:03:25
Station 12	C-Shift	R12	10/14/24 6:09 AM	10/14/24 6:17 AM	EMS call, excluding vehicle accident with injury	0:07:29
Station 12	A-Shift	R12	10/14/24 12:44 PM	10/14/24 12:50 PM	EMS call, excluding vehicle accident with injury	0:05:51
Station 12	A-Shift	R12	10/14/24 3:10 PM	10/14/24 3:15 PM	EMS call, excluding vehicle accident with injury	0:04:46
Station 12	A-Shift	R12	10/14/24 6:45 PM	10/14/24 6:48 PM	EMS call, excluding vehicle accident with injury	0:03:22
Station 12	A-Shift	R12	10/14/24 7:59 PM	10/14/24 8:02 PM	No incident found on arrival at dispatch address	0:03:08
Station 12	B-Shift	Q12	10/15/24 8:58 AM	10/15/24 9:04 AM	Unintentional transmission of alarm, other	0:06:20
Station 12	B-Shift	R12	10/16/24 12:35 AM	10/16/24 12:44 AM	EMS call, excluding vehicle accident with injury	0:08:40
Station 12	B-Shift	Q12	10/16/24 12:37 AM	10/16/24 12:43 AM	EMS call, excluding vehicle accident with injury	0:06:21
Station 12	B-Shift	R11*	10/16/24 12:37 AM	10/16/24 12:48 AM	EMS call, excluding vehicle accident with injury	0:10:53
Station	C-	R12	10/16/24	10/16/24	EMS call, excluding vehicle	0:07:23

12	Shift		2:24 PM	2:31 PM	accident with injury	
Station 12	C-Shift	R12	10/16/24 3:10 PM	10/16/24 3:14 PM	EMS call, excluding vehicle accident with injury	0:04:47
Station 12	C-Shift	Q12	10/16/24 7:25 PM	10/16/24 7:30 PM	Alarm system sounded due to malfunction	0:04:36
Station 12	A-Shift	Q12	10/17/24 8:55 AM	10/17/24 8:59 AM	Alarm system sounded due to malfunction	0:04:35
Station 12	A-Shift	R12	10/17/24 9:03 AM	10/17/24 9:08 AM	EMS call, excluding vehicle accident with injury	0:04:30
Station 12	A-Shift	R12	10/17/24 10:47 AM	10/17/24 10:51 AM	EMS call, excluding vehicle accident with injury	0:04:08
Station 12	A-Shift	R12	10/17/24 3:03 PM	10/17/24 3:07 PM	EMS call, excluding vehicle accident with injury	0:04:37
Station 12	A-Shift	Q12	10/18/24 12:43 AM	10/18/24 12:49 AM	System malfunction, other	0:05:39
Station 12	A-Shift	R12	10/18/24 1:32 AM	10/18/24 1:40 AM	EMS call, excluding vehicle accident with injury	0:07:07
Station 12	A-Shift	R12	10/18/24 3:08 AM	10/18/24 3:15 AM	EMS call, excluding vehicle accident with injury	0:06:49
Station 12	B-Shift	R12	10/18/24 9:27 AM	10/18/24 9:36 AM	EMS call, excluding vehicle accident with injury	0:08:27
Station 12	B-Shift	R12	10/18/24 11:46 AM	10/18/24 11:52 AM	EMS call, excluding vehicle accident with injury	0:05:04
Station 12	B-Shift	R12	10/18/24 4:33 PM	10/18/24 4:38 PM	EMS call, excluding vehicle accident with injury	0:04:58
Station 12	B-Shift	R12	10/18/24 6:39 PM	10/18/24 6:43 PM	EMS call, excluding vehicle accident with injury	0:04:10
Station 12	B-Shift	R11*	10/18/24 6:43 PM	10/18/24 6:49 PM	EMS call, excluding vehicle accident with injury	0:06:30
Station 12	B-Shift	Q12	10/18/24 6:43 PM	10/18/24 6:47 PM	EMS call, excluding vehicle accident with injury	0:03:29
Station 12	B-Shift	R12	10/18/24 9:32 PM	10/18/24 9:38 PM	EMS call, excluding vehicle accident with injury	0:06:10
Station 12	B-Shift	R12	10/18/24 11:28 PM	10/18/24 11:33 PM	EMS call, excluding vehicle accident with injury	0:05:13
Station 12	C-Shift	R12	10/19/24 11:09 PM	10/19/24 11:15 PM	No incident found on arrival at dispatch address	0:05:55
Station 12	C-Shift	Q12	10/20/24 5:41 AM	10/20/24 5:47 AM	Smoke detector activation due to malfunction	0:05:58
Station 12	A-Shift	Q12	10/20/24 2:12 PM	10/20/24 2:19 PM	Person in distress, other	0:06:35
Station 12	A-Shift	R12	10/20/24 3:28 PM	10/20/24 3:32 PM	EMS call, excluding vehicle accident with injury	0:04:02
Station 12	A-Shift	R12	10/21/24 4:13 AM	10/21/24 4:19 AM	EMS call, excluding vehicle accident with injury	0:06:34
Station 12	A-Shift	Q12	10/21/24 5:08 AM	10/21/24 5:17 AM	EMS call, excluding vehicle accident with injury	0:09:24
Station 12	A-Shift	R12	10/21/24 5:19 AM	10/21/24 5:26 AM	EMS call, excluding vehicle accident with injury	0:06:55
Station 12	B-Shift	R12	10/21/24 8:54 AM	10/21/24 8:58 AM	EMS call, excluding vehicle accident with injury	0:04:07
Station 12	B-Shift	Q12	10/21/24 11:17 AM	10/21/24 11:24 AM	Public service	0:06:47
Station 12	B-Shift	R12	10/21/24 8:51 PM	10/21/24 8:57 PM	EMS call, excluding vehicle accident with injury	0:06:09
Station	C-	R12	10/22/24	10/22/24	EMS call, excluding vehicle	0:10:26

12	Shift		7:26 AM	7:36 AM	accident with injury	
Station 12	C-Shift	R12	10/22/24 2:55 PM	10/22/24 2:58 PM	EMS call, excluding vehicle accident with injury	0:02:14
Station 12	C-Shift	R12	10/22/24 9:00 PM	10/22/24 9:05 PM	EMS call, excluding vehicle accident with injury	0:04:43
Station 12	C-Shift	R11*	10/22/24 9:02 PM	10/22/24 9:09 PM	EMS call, excluding vehicle accident with injury	0:07:33
Station 12	C-Shift	Q12	10/22/24 9:14 PM	10/22/24 9:18 PM	EMS call, excluding vehicle accident with injury	0:04:26
Station 12	A-Shift	R12	10/23/24 10:26 AM	10/23/24 10:31 AM	EMS call, excluding vehicle accident with injury	0:04:24
Station 12	A-Shift	Q12	10/23/24 10:48 AM	10/23/24 10:52 AM	EMS call, excluding vehicle accident with injury	0:04:21
Station 12	A-Shift	R24*	10/23/24 10:48 AM	10/23/24 10:59 AM	EMS call, excluding vehicle accident with injury	0:11:04
Station 12	A-Shift	Q12	10/23/24 11:18 PM	10/23/24 11:27 PM	No incident found on arrival at dispatch address	0:08:37
Station 12	A-Shift	Q12	10/24/24 5:16 AM	10/24/24 5:24 AM	Heat from short circuit (wiring), defective/worn	0:07:33
Station 12	A-Shift	Q12	10/24/24 5:16 AM	10/24/24 5:24 AM	Heat from short circuit (wiring), defective/worn	0:07:33
Station 12	A-Shift	R12	10/24/24 5:16 AM	10/24/24 5:23 AM	Heat from short circuit (wiring), defective/worn	0:07:03
Station 12	A-Shift	R12	10/24/24 5:16 AM	10/24/24 5:23 AM	Heat from short circuit (wiring), defective/worn	0:07:03
Station 12	B-Shift	Q12	10/24/24 8:05 AM	10/24/24 8:08 AM	EMS call, excluding vehicle accident with injury	0:03:41
Station 12	B-Shift	R12	10/24/24 8:03 AM	10/24/24 8:10 AM	EMS call, excluding vehicle accident with injury	0:06:05
Station 12	B-Shift	R11*	10/24/24 8:10 AM	10/24/24 8:17 AM	EMS call, excluding vehicle accident with injury	0:07:12
Station 12	B-Shift	R12	10/24/24 3:58 PM	10/24/24 4:02 PM	EMS call, excluding vehicle accident with injury	0:04:17
Station 12	B-Shift	R12	10/24/24 8:40 PM	10/24/24 8:47 PM	EMS call, excluding vehicle accident with injury	0:06:35
Station 12	C-Shift	P11*	10/25/24 9:46 AM	10/25/24 9:51 AM	EMS call, excluding vehicle accident with injury	0:05:06
Station 12	C-Shift	R12	10/25/24 9:46 AM	10/25/24 9:55 AM	EMS call, excluding vehicle accident with injury	0:08:19
Station 12	C-Shift	Q12	10/25/24 2:49 PM	10/25/24 2:54 PM	Detector activation, no fire - unintentional	0:04:33
Station 12	C-Shift	R12	10/25/24 4:51 PM	10/25/24 4:58 PM	EMS call, excluding vehicle accident with injury	0:06:17
Station 12	C-Shift	R12	10/25/24 8:43 PM	10/25/24 8:55 PM	EMS call, excluding vehicle accident with injury	0:12:20
Station 12	C-Shift	R11*	10/25/24 9:01 PM	10/25/24 9:07 PM	EMS call, excluding vehicle accident with injury	0:05:26
Station 12	C-Shift	R12	10/25/24 10:00 PM	10/25/24 10:05 PM	EMS call, excluding vehicle accident with injury	0:05:19
Station 12	A-Shift	Q12	10/26/24 3:43 PM	10/26/24 3:50 PM	Defective elevator, no occupants	0:06:44
Station 12	A-Shift	R12	10/26/24 3:54 PM	10/26/24 3:57 PM	EMS call, excluding vehicle accident with injury	0:02:47
Station 12	A-Shift	R12	10/26/24 5:50 PM	10/26/24 5:53 PM	EMS call, excluding vehicle accident with injury	0:03:53
Station	A-	Q12	10/26/24	10/26/24	EMS call, excluding vehicle	0:05:36

12	Shift		6:03 PM	6:09 PM	accident with injury	
Station 12	A-Shift	R11	10/26/24 6:03 PM	10/26/24 6:13 PM	EMS call, excluding vehicle accident with injury	0:09:27
Station 12	A-Shift	R12	10/26/24 7:59 PM	10/26/24 8:01 PM	EMS call, excluding vehicle accident with injury	0:02:16
Station 12	A-Shift	R12	10/26/24 9:49 PM	10/26/24 9:54 PM	EMS call, excluding vehicle accident with injury	0:04:53
Station 12	A-Shift	R12	10/26/24 10:33 PM	10/26/24 10:35 PM	No incident found on arrival at dispatch address	0:01:49
Station 12	A-Shift	R12	10/27/24 1:59 AM	10/27/24 2:06 AM	EMS call, excluding vehicle accident with injury	0:07:17
Station 12	A-Shift	Q12	10/27/24 7:23 AM	10/27/24 7:28 AM	Assist invalid	0:05:16
Station 12	B-Shift	R12	10/27/24 7:47 AM	10/27/24 7:50 AM	EMS call, excluding vehicle accident with injury	0:03:47
Station 12	B-Shift	R12	10/27/24 2:09 PM	10/27/24 2:13 PM	EMS call, excluding vehicle accident with injury	0:04:37
Station 12	B-Shift	R12	10/27/24 7:32 PM	10/27/24 7:36 PM	EMS call, excluding vehicle accident with injury	0:04:06
Station 12	B-Shift	Q12	10/27/24 8:27 PM	10/27/24 8:33 PM	Defective elevator, no occupants	0:06:00
Station 12	B-Shift	R12	10/27/24 9:43 PM	10/27/24 9:48 PM	EMS call, excluding vehicle accident with injury	0:04:48
Station 12	C-Shift	R12	10/28/24 9:40 AM	10/28/24 9:48 AM	EMS call, excluding vehicle accident with injury	0:07:02
Station 12	C-Shift	P11*	10/28/24 3:36 PM	10/28/24 3:47 PM	Gasoline or other flammable liquid spill	0:10:51
Station 12	C-Shift	Q12	10/28/24 3:35 PM	10/28/24 3:38 PM	Detector activation, no fire – unintentional	0:03:44
Station 12	C-Shift	Q12	10/28/24 6:25 PM	10/28/24 6:30 PM	Assist invalid	0:05:02
Station 12	C-Shift	R12	10/28/24 6:57 PM	10/28/24 7:03 PM	EMS call, excluding vehicle accident with injury	0:05:59
Station 12	C-Shift	R12	10/28/24 7:51 PM	10/28/24 7:56 PM	EMS call, excluding vehicle accident with injury	0:04:50
Station 12	A-Shift	R12	10/29/24 7:30 PM	10/29/24 7:35 PM	Search for person in water	0:04:46
Station 12	A-Shift	Q12	10/29/24 7:30 PM	10/29/24 7:39 PM	Search for person in water	0:08:19
Station 12	A-Shift	R12	10/29/24 8:58 PM	10/29/24 9:02 PM	EMS call, excluding vehicle accident with injury	0:03:47
Station 12	B-Shift	Q12	10/30/24 11:39 AM	10/30/24 11:42 AM	Service Call, other	0:03:17
Station 12	B-Shift	Q12	10/30/24 11:54 PM	10/31/24 12:01 AM	Smoke detector activation, no fire - unintentional	0:06:36

***Closest unit response- R12 was called for a rescue call outside of Lauderdale by the Sea.**

All reports in the future will include all contractual information that is required.





Agenda Item No: 8.a.

Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Linda Connors, Town Manager

Submitting Department: Administration

Item Type: Presentations

Agenda Section: TOWN MANAGER REPORT

Subject Title: Town Manager Report

Explanation:



1. Pier Sign

The Commission asked staff to replace the Pier sign after it was removed and stored during the town's recent downtown renovation. This week, the sign was replaced a few feet from its original location.

2. Farmer's Market

Our annual Farmer's Market is set to open! The Farmer's Market is held every Sunday through

May, starting on December 1st. The hours this year will be 9:00 AM through 1:00 PM.

3. Christmas By The Sea

Christmas By The Sea returns on Wednesday, December 4, 2024, from 5:00 PM to 8:00 PM in our downtown area! Enjoy browsing for holiday and seaside-themed gifts and crafts, writing letters to Santa, and watching our annual tree lighting to get in the holiday spirit.

4. Town Topics printing

At the October 22, 2024 meeting, the Town Commission requested staff research the cost of printing and mailing the quarterly Town Topics newsletter to approximately 3,200 households. The annual costs for the various options are included in the table below. As the number of printed copies increase, the costs for the printing decreases because the set up, which is the most expensive aspect of the printing process, remains the same. The postage price is subject to change based on the Post Office established rates. At 3,200 copies, the cost to print an individual copy is approximately \$1.20.

Distribution Annual Costs	
Digital + Mail to Requests	\$ 4,800
Town Registered Voters	\$24,092
All Town Households	\$28,200

Town Commission Action Requested: Provide direction to the staff regarding future Town Topics distribution.



5. Exemplary Employees

As the Town Manager, I am well aware of the town's hard-working employees. However, it is always nice when residents acknowledge our employee's exemplary service. Last weekend, trash and debris littered the Commercial Boulevard bridge. Bob and Gordon, pictured above, were there right away to clean up the mess and ensure the roadway was safe for oncoming traffic.

6. Upcoming Meetings

Meeting Date	Type	Time
November 21	Code Compliance	5:00 PM
December 4	Planning and Zoning Board	6:00 PM
December 10	Commission Meeting	6:30 PM

Recommendation: N/A

Exhibits: None



Agenda Item No: 10.a.

Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Katrina Adler, Town Clerk

Submitting Department: Administration

Item Type: Approval of Minutes

Agenda Section: APPROVAL OF MINUTES

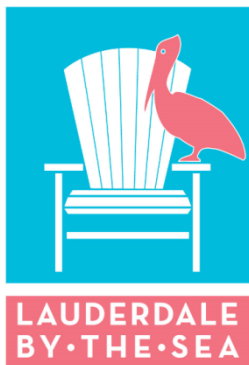
Subject Title: Approval of minutes for October 22, 2024 Regular Commission Meeting

Explanation: Draft Minutes for approval for October 22, 2024 Regular Commission Meeting.

Recommendation: Accept/Approve

Exhibits:

1. 10-22-24 Regular Meeting Draft Minutes



DRAFT
TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, October 22, 2024
6:30 PM

1. CALL TO ORDER, MAYOR EDMUND MALKOON

Mayor Edmund Malkoon called the meeting to order at 6:30 p.m. Also present were Vice Mayor Randy Strauss, Commissioner Richard DeNapoli, Commissioner John A. Graziano, Town Manager Linda Connors, Town Attorney Susan Trevarthen, Deputy Town Manager/Public Works Director Ken Rubach, Assistant to the Town Manager Courtney Easley, Development Services Director Jhanelle Campbell, Director of Budget and Finance Lucila Lang, Assistant Finance Director Edner Saint-Jean, Events and Marketing Manager Katie Anderson, and Town Clerk Katrina Adler.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

Rabbi Benzion Singer gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

None.

Vice Mayor Strauss made a motion, seconded by Commissioner Graziano, that Commissioner Pouloupoulos be excused from today's meeting. Motion carried 4-0.

5. PRESENTATIONS

a. Proclamation – Pioneer Day for Joan Garrett

Mayor Malkoon read a Proclamation in honor of Lauderdale-By-The-Sea resident Joan Garrett in recognition her longtime service to the Town. She will be recognized as a Broward County Pioneer on November 9, 2024 at the 48th Annual Pioneer Days celebration.

6. PUBLIC COMMENTS

At this time Mayor Malkoon opened public comment.

Marc Pearson, 1921 Water's Edge, asked that the Commission pass a Resolution directing Town Staff to work with the owner of the house at 1931 Coral Reef Drive to revise their permitted plans and remove all rooftop railings and lighting, as well as the phrase "Maintenance Access Area."

Mr. Pearson asserted that he continues to perceive the space as a rooftop activity area, which is prohibited by Town Code. He recommended creating an advisory body to review the Town's permitting process, as he has concerns with this process, and concluded that he also has two appeals in process which are unrelated to 1931 Coral Reef Drive.

With no other individuals wishing to speak at this time, Mayor Malkoon closed public comment.

7. PUBLIC SAFETY DISCUSSION

a. BSO September 2024 Public Safety Report

Captain Bill Wesolowski of the Broward Sheriff's Office (BSO) thanked all participants in the recent "Coffee with a Cop" event held on October 2, 2024. He also thanked the Village Grille for hosting the event and the Town for publicizing it.

BSO will participate in the Town's annual Boo!-By-The-Sea event by bringing their SWAT truck and establishing a tent for giveaways.

Captain Wesolowski reported that BSO conducted a probation and parole sweep. Roughly eight individuals on felony probation live in the Town. BSO conducted an administrative search of the individuals' residences in conjunction with the Probation and Parole Department. One individual was found to be in possession of a large amount of narcotics and was arrested.

The Deputy of the Month is Deputy Eric Boylan, who investigated the theft of a cell phone by an individual living in the Town.

Commissioner Graziano asked if the 99 hours of overtime listed on the BSO report is included in the Town's budget. Captain Wesolowski explained that these funds came

from the overtime budget allotted as part of BSO's regular consideration. They do not include additional or enhanced overtime funds and are part of the \$6.2 regular budget.

b. PBFR September 2024 Public Safety Report

Fire Marshal Ashley Zalewski, representing Pompano Beach Fire Rescue (PBFR), reported that crews responded to 202 calls in September 2024 with an average time of 6 minutes 13 seconds. She added that PBFR will also participate in Boo!-By-The-Sea and will have a fire truck and mascot on hand.

Commissioner Graziano asked if PBFR responds to all locations at which a fire alarm has sounded or if they also respond to locations which need to deactivate or maintain their alarms. Fire Marshal Zalewski advised that certain areas of high-rise buildings are required to have smoke detectors tied to their fire alarm panels; however, PBFR would require a release from liability to change batteries in those devices.

Commissioner DeNapoli addressed response times, noting that most of these are in the area of five minutes with the exception of the last three to four responses. Fire Marshal Zalewski explained that there has been significant activity of trucks leaving and other trucks coming in, which affects response times.

8. TOWN MANAGER REPORT

a. Town Manager Report

Town Manager Linda Connors reminded all present that Boo!-By-The-Sea will be held on Saturday, October 26, 2024. The Town's 75th Anniversary event has been rescheduled to Saturday, November 2, 2024 in Friedt Park due to rain on the previous date.

The Town's Veterans Day ceremony is scheduled for Monday, November 11, 2024. The Town Manager encouraged all veterans in the Town to fill out a participation form and be recognized at this event. This year's guest speaker will be author John "Chick" Donohue.

Staff is working on an update to the Town's website as well as creation of a mobile app. Both are expected to be launched by December 2024.

Town Manager Connors continued that Mayor Malkoon had requested Staff look into the costs associated with mailing copies of *Town Topics* rather than emailing them. Current practice is to email the document to everyone on the email list, which consists of approximately 2900 people, and to make another 50 copies available at Town Hall. Residents were also asked whether they would prefer a hard copy of the document. Nearly 400 residents indicated they would like their copies mailed to them, which costs \$4800 annually.

Town Manager Connors advised that if the Commission wishes the Town to return to the practice of mailing printed copies, this would cost approximately \$21,000 for the remaining three quarters of the current year, as the first quarter's document has already been provided. Funds are available for this purpose in the Contingency Fund. She requested direction from the Commissioners on this issue.

Mayor Malkoon explained that he had requested the Town Manager look into these options, as the Town had previously mailed copies of *Town Topics* to residents but later chose to save money by providing the document via email. He noted that this document serves as the Commission's primary method of communicating with residents.

Mayor Malkoon recalled that he had also requested clarification of the recipients of the mailed document. This was determined to be "basically every household," which includes individuals and families who rent their homes as well as homeowners. He pointed out that households may also opt out of receiving printed copies, and extra copies may be printed and made available in condominiums.

Vice Mayor Strauss asked if the \$28,000 annual cost is inclusive of both printing and delivery to all 3205 households included in the Town's voter list. Town Manager Connors advised that the \$28,000 figure includes printing and mailing four times per year to 4785 residences.

Town Manager Connors added that Staff spent nearly one year notifying residents who received *Town Topics* that they were converting to a digital format and requesting clarification of how residents wished to receive the document going forward. 386 residents asked for printed and mailed copies. It costs \$1200 per quarter to print and mail these copies to those who requested them, reserving 50 additional copies made available at Town Hall.

Vice Mayor Strauss commented that he did not wish to spend money printing and mailing copies to households that have not specifically indicated this was their

preference. He felt this was preferable to a blanket mailing to all residents at an annual cost of \$28,000; however, he acknowledged that many individuals do not use electronic communications.

Commissioner DeNapoli noted that the cost would be reduced if the document were mailed only to the 3205 households on the Town's registered voter list. As the cost of preparing the document is separate from the costs associated with printing or mailing, he requested clarification of the real costs of producing and mailing 3200 copies as well as a number of extra copies. Town Manager Connors confirmed that the cost per unit would be calculated.

Commissioner Graziano stated that he felt *Town Topics* should be mailed to all residents, as it generates activity at community events as well as providing information. He felt sending the document to registered voters only would omit many property owners.

Commissioner DeNapoli asked if the plan is to mail the next *Town Topics* to all residents. Town Manager Connors clarified that the most recent edition was sent only via email except for the 386 households which requested a printed copy. The Commission is asked to make a decision regarding the three remaining editions in the current fiscal year.

Commissioner DeNapoli also pointed out that some addresses within the Town may belong to vacation rental or other property owners who do not reside in Lauderdale-By-The-Sea. Using the voter list would be preferable to mailing documents to all those households.

Commissioner Graziano observed that the Town also receives some income from advertising. Mayor Malkoon commented that the Town may wish to contact its advertisers and inform them that copies will be mailed to 3200 households, as this could stimulate additional advertisements.

Town Manager Connors concluded that Staff will bring back the cost of printing and mailing 3200 copies, at which time the Commission can make a decision.

Town Manager Connors advised that the Waste Management agreement for disposal of bulk waste is up for renewal. While this agreement is included in the contract previously approved by the Commission, Staff is moving forward with the one-year extension of this contract.

Election Day is Tuesday, November 5, 2024. The Town's polling locations include Jarvis Hall and Assumption Catholic Church. There is a ballot initiative which would change the date of local elections from March to November. The next Town Commission meeting is scheduled for November 12, 2024.

Vice Mayor Strauss recalled that parking passes may now be purchased online rather than in person; however, he expressed concern for residents who may not own smartphones or other communications technology equipment. Town Manager Connors noted that Staff can help residents who come into Town Hall for these passes.

Commissioner DeNapoli advised that the final day to request a vote-by-mail ballot is Thursday, October 24, 2024 by 5 p.m. They may be requested at BrowardVotes.gov.

Commissioner DeNapoli also requested more information on the Town's app. Events and Marketing Manager Katie Anderson explained that the app mirrors the website and will be updated in real time. One feature of the app is the "Report a Problem" feature, which allows residents to report issues with accompanying photos. These reports are sent immediately to the appropriate Department leader, who can share updates with the reporting individual.

Commissioner Graziano advised that there were issues which required clarification in the evaluation of certificates of insurance. He has worked with Town Staff to develop a system which is currently being implemented and will provide the Town with a greater measure of security. These certificates list the Town as a named insured entity for all contracts, special events, and Memoranda of Understanding (MOUs).

Commissioner Graziano continued that a sketch of the proposed public safety building will be presented at a subsequent meeting, and he wished to have additional discussion on how to move forward on this issue.

b. August 2024 Finance Report

Director of Budget and Finance Lucila Lang recalled that the Commission had asked her to look into obtaining a line of credit for the Town for emergency purposes. She included the bank with the best rates and costs associated with a line of credit in her report. Banks were asked to provide quotes on both a \$2 million and \$4 million line of credit.

Director of Budget and Finance Lang pointed out that the final column of charges related to lines of credit lists the annual cost to the Town. These include first-time legal costs that would be necessary to prepare documentation for a line of credit. The line of credit would then be good for 60 months. Choosing to renew would incur the legal costs once more.

Director of Budget and Finance Lang continued that the Town is considering investment of some of its cash currently in the bank, beginning with a \$2 million investment in Treasury Bills (T-bills). If an emergency occurred, the line of credit would allow the Town to access this cash right away without requiring access to investments.

Vice Mayor Strauss expressed concern with the administrative costs associated with establishing a line of credit, which could exceed the amount of money earned on certificates of deposit. Director of Budget and Finance Lang advised that if the Town wished to proceed with either a \$2 million or a \$4 million line of credit, neither is a budgeted amount. The money would be taken from the Contingency and General Funds.

Commissioner DeNapoli noted that individual banks may charge for items such as document stamps and tangible taxes, which would approach \$20,000 for the \$4 million line of credit. He recommended looking into whether or not these attached costs would apply, pointing out that customers are often asked to pay these costs.

Commissioner DeNapoli asked if it would be possible to borrow against the current T-bill portfolio, which is typically free of charge if permitted by policy. He concluded that this could be an additional way to access the Town's money at no charge if it is permitted by Town investment policy or bank policy.

Town Manager Connors recalled that one reason the Town was exploring a line of credit was because the Mayor had expressed concern with how quickly an emergency could affect the Town's reserve dollars. A line of credit would allow the Town to spend its \$2.5 million while also providing access to more money if needed.

Mayor Malkoon recommended that Staff review the recent updates to its investment policy and determine if this is an option with the current portfolio.

Director of Budget and Finance Lang asked if the legal counsel fees would be charged to the Town if they pursued the option described by Commissioner DeNapoli. It was clarified that the \$2.5 million is currently with South State Bank. Commissioner DeNapoli

replied that this would depend upon whether or not that institution allowed margining ability or portfolio lending, as well as the percent of the portfolio value the bank would allow. He concluded that there may be another free alternative method, depending upon how much emergency money is needed.

9. TOWN ATTORNEY REPORT

Town Attorney Susan Trevarthen advised that a number of dates are available for the rescheduling of Commission ethics training. Town Manager Connors added that another option would be holding the training session online via the Florida League of Cities.

Town Attorney Trevarthen further clarified that a portion of each year's training must be held in person, while a portion may be held via online sources. In the past, the Commission has found there is value in learning and discussing this information as a group so they may approach issues with a shared understanding.

The Commissioners discussed the prospective training dates and selected Tuesday, December 3, 2024, pending consultation with Commissioner Pouloupoulos.

10. APPROVAL OF MINUTES

a. Approval of minutes for October 8, 2024 Regular Commission Meeting

Commissioner Graziano noted a correction on p.16, paragraph 5: he had stated that he believed the Aruba Beach Café and Anglin's Pier were licensed to sell alcohol on the beach in a similar manner to the Plunge Hotel, as they have beachfront properties.

Commissioner Graziano also addressed the discussion of the Friday Night Music Series, noting that the minutes reflect the Town as awaiting a check from a vendor, and asked if the Town has received this check. Town Manager Connors replied that the check was sent directly to Town consultant Conceptual Communications, which has received the check and will send it on to the Town.

Vice Mayor Strauss made a motion, seconded by Commissioner Graziano, to approve, subject to the amendments. Motion carried 4-0.

11. CONSENT AGENDA

None.

12. OLD BUSINESS

a. South Silver Shores Update

Deputy Town Manager/Public Works Director Ken Rubach recalled that on June 30, 2023, Staff met with residents of the South Silver Shores neighborhood to discuss concerns regarding traffic, including traffic from nearby businesses driving through the residential area and general upkeep from businesses. The residents requested that Staff wait until the tourist season to undertake a traffic survey in order to capture accurate data.

The survey was done at the beginning of 2024 and provided data that did not support a street closure or speed humps, both of which had been suggested by the neighborhood residents. The residents, however, still felt strongly about their concerns. At the May 28, 2024 Commission meeting, Staff requested the Commission authorize a temporary closure of the area, which began on Tuesday, June 18 and concluded on August 13.

At the conclusion of the trial closure, Staff provided approximately 80 South Silver Shores homes with a survey and received responses from 36 individuals in 29 homes.

Deputy Town Manager/Public Works Director Rubach reviewed individual questions on the survey, noting that 19 residents felt the closure reduced traffic in the subject neighborhood, while 17 felt it had not. Another question addressed making the closure permanent, to which 17 residents replied “yes” and 19 replied “no.” While some residents found the closure to be helpful, others expressed concerns regarding the inconvenience resulting from it.

Another resident feedback meeting, held on September 5, 2024, was attended by 13 residents to discuss the results of the survey. The residents closest to the road closure and most affected by it did not want it to become permanent. Speed in the neighborhood was also discussed, as several residents remained concerned with speeding. While the study did not support the conclusion that speeding was an issue, there was still a general feeling that the area could benefit from traffic calming measures such as speed humps.

Concerns also lingered regarding vehicles exiting Benihana restaurant. Staff and BSO have attempted to monitor stacking, but encouraged residents to notify Parking Staff and BSO to document this problem when it occurs.

Given the results of the survey, Staff requests Commission direction on the following options:

- The cost of implementing a permanent closure of West Tradewinds Avenue to southbound traffic would be approximately \$20,000
- Approving speed humps throughout the neighborhood, with direction regarding the number and location of the speed humps; 51% of residents on the street affected must agree to implementation and placement; the estimated cost is roughly \$4000 per speed hump
- Remove asphalt shoulder along Basin Drive and add landscaping at a cost of approximately \$70,000; traffic calming measures could also be added to this area
- Take no further action

Mayor Malkoon suggested that at a later date, a camera could be added to Basin Drive or West Tradewinds Avenue to capture traffic patterns coming from Benihana. Deputy Town Manager/Public Works Director Rubach noted that this is a possibility going forward.

At this time Mayor Malkoon opened public comment, which he closed upon receiving no input.

Commissioner DeNapoli proposed acting on options 2 and 4, omitting options 1 and 3. He asked how much the study had cost the Town. Deputy Town Manager/Public Works Director Rubach estimated it was slightly more than \$25,000.

Commissioner DeNapoli also commented that the study showed speeding was not a problem in the subject neighborhood. Deputy Town Manager/Public Works Director Rubach replied that cars in the area were within the 99th percentile with regard to speeding fewer than five miles over the limit.

Deputy Town Manager/Public Works Director Rubach continued that with regard to the vote required for speed humps, Staff would require the approval of 51% of the residents on the affected street. Residents must also indicate they were willing to have a speed hump directly in front of their property. The Town's engineer would then look into how many speed humps would be needed.

Vice Mayor Strauss commented that while he was not in favor of speed humps, he was concerned with a resident who is speeding in the ~~area,~~ area and suggested that law enforcement might reach out to that individual to address this concern. He also encouraged residents to reach out to the person in question.

Vice Mayor Strauss continued that the community was divided on the issue of road closure, which he felt dictated the response of not closing the roadway. He was in favor of the use of cameras to provide real-time information, but was not in favor of implementing landscaping on Basin Drive as a calming measure. He concluded that the community should remain vigilant on what is happening in that neighborhood.

Eric Johasky, 275 Capri Avenue, stated that the initial issue among neighborhood residents had been traffic associated with the Benihana restaurant, which often drove through the neighborhood. When residents considered solutions, however, various options were not available because they were not compliant with the requirements of the Florida Department of Transportation (FDOT) or other needs.

Mr. Johasky continued that the result of the road closure was fewer cars driving through the area, although he did not have a specific count. He felt something should be done to further minimize traffic in the residential neighborhood.

Kristen Sampo, 4300 E. Tradewinds Avenue, also advised that the issue is not speeding but the amount of “cut-through” traffic in the neighborhood. She recalled that there had been concern for an increase in traffic on Tradewinds Avenue, which did not happen. She was in favor of road closure and was disappointed no action would be taken, but suggested that this option could be revisited in the future.

Deputy Town Manager/Public Works Director Rubach advised that the traffic study had addressed cars driving through the neighborhood as well as speeding. The study showed that the average trips per day were lower than what would normally be seen in a residential neighborhood of comparable size.

Mayor Malkoon suggested “choking” the road in question, which would not close the lane but would narrow it so drivers have more difficulty entering. Deputy Town Manager/Public Works Director Ken Rubach replied that it would be very difficult to do this while still allowing traffic into the roadway.

Mayor Malkoon also recalled the Town has previously accessed a neighborhood grant program for the implementation of gates in another community. Deputy Town

Manager/Public Works Director Rubach confirmed that this was one of the original proposals to address stacking; however, the South Silver Shores neighborhood would be a more difficult place for this due to the location of the restaurant and traffic coming from the arterial roadway.

Commissioner Graziano asked why signage is not more successful in addressing concerns. Deputy Town Manager/Public Works Director Rubach replied that many drivers pay little attention to signs unless it is accompanied by an enforcement presence.

Town Manager Connors noted that as part of the traffic study, the Town provided No Through Traffic and No Standing Traffic signs, which had limited success. They also removed on-street parking spaces, which met with the residents' approval. Staff met with Benihana and received useful feedback, including the recommendation to change their valet parking practices. BSO was asked to monitor the area more frequently as well.

Deputy Town Manager/Public Works Director Rubach advised that Staff can look into the installation of cameras in the subject neighborhood, which could alleviate some of the residents' concerns.

Commissioner DeNapoli addressed signage directed at speeding, proposing that a Children at Play sign or a flashing radar sign might be useful. Deputy Town Manager/Public Works Director Rubach confirmed that these signs could be installed.

Marc Pearson, 1921 Water's Edge, commented that a radar sign in his neighborhood had been helpful, particularly when accompanied by a law enforcement presence.

Deputy Town Manager/Public Works Director Rubach confirmed that Staff can look into the costs of radar signs as well as Children at Play signs. Mayor Malkoon also spoke in favor of the installation of cameras.

Town Manager Connors noted that the Commissioners had reacted with consensus against implementing any of the options listed in the Staff Report. She added that finalizing the Town's camera system, which appears later on tonight's Agenda, will allow consideration of additional locations in the South Silver Shores neighborhood. There is also funding in the budget for signage and Staff can work with the neighborhood to install it.

13. NEW BUSINESS

a. Requirement for Measuring Fence Heights from Adjoining Lots

Development Services Director Jhanelle Campbell stated that the Town's current fence Code, found in Section 30-313.d.1.a of the Unified Land Development Regulations (ULDR), requires fences, walls, and hedge heights to be measured from the natural contour of the ground on an adjoining lot. This was intended to ensure consistency and fairness in height measurements between neighboring properties.

Development Services Director Campbell advised, however, that differences in elevations on adjoining lots are now causing discrepancies in fence height perceptions. This is in part because the base floor elevation of a building's first habitable floor is significantly higher than previous requirements. Measurement of natural contours also requires professional surveys, which increase costs and project times. The current rule has begun to unfairly restrict fence height based on adjacent lots' conditions.

Standardizing the height measurement would ensure fairness and allow residents to construct the fence height they need, particularly in the case of pool enclosures. Staff recommends eliminating the requirement to measure from adjacent lots and basing the height measurement solely on the property which is installing the fence. This will simplify compliance and reduce potential life safety issues by ensuring adequate pool screening.

If approved, the next step in this process would be to draft an Ordinance and bring it before the Town's Planning and Zoning Board, followed by the Commission, for first reading.

Commissioner DeNapoli asked if the result of this change would be a standard height for all properties. Development Services Director Campbell explained that Code already allows for 6 ft.; the change would eliminate the discrepancy between new homes, which are built to a higher base floor elevation, and older homes.

Town Manager Connors requested consensus on whether or not Staff should look into this issue further and draft an Ordinance to go before the Planning and Zoning Board as well as the Commission. The Commissioners agreed to this proposal by consensus.

b. Consider Authorizing Town Staff to Draft a Code Change to Allow Businesses to Use Window Decals Instead of Brown Paper

Development Services Director Campbell explained that Section 313, Subsection U of Town Code requires vacant or closed businesses to cover their windows with brown paper. The intent of this requirement was to maintain a clean appearance. Staff believes, however, that using paper can detract from the appearance of the Town, particularly in the tourist-heavy business district.

The proposed change would give businesses the option of using window decals. Staff believes this would be an aesthetic improvement and would create excitement for incoming businesses. If approved, Staff would draft an Ordinance updating window covering requirements to allow decals, providing guidelines and a timeline for their use. The Ordinance would be reviewed by the Planning and Zoning Board as well as the Commission.

Commissioner DeNapoli stated he was in favor of the idea.

Vice Mayor Strauss was also in favor of the change, but pointed out that the update would violate the current Sign Ordinance. He expressed concern that the change could delay completion of a new business or renovation, as well as with the possibility of advertising a business that is not open yet. He felt the appropriateness of the proposal would depend upon what is on the decal.

Development Services Director Campbell advised that the decals would be approved on a temporary basis, with either an established time limit for their use or a requirement to tie approval to the building permit process. Decals would not be approved as permanent signage. Vice Mayor Strauss concluded that he felt these would be an improvement over existing Code.

Town Attorney Trevarthen added that the decals would be limited to speech related to the premises on which they are displayed. They could not be used to advertise other businesses.

Commissioner Graziano recommended that the proposed Ordinance language include clarification that the decals may not be permanent signage.

The Commissioners agreed by consensus to bring back the proposed language.

**c. Special Event Application: Coast Boutique 10-Year Anniversary,
November 20, 2024**

Events and Marketing Manager Anderson stated that Ina Marjakangas, owner of Coast Boutique, has submitted a Special Event Application for the 10-year anniversary celebration of this business. It is scheduled for Wednesday, November 20, 2024 at the Coast Boutique storefront as well as the sidewalk outside their entrance. The Applicant anticipates approximately 50 guests throughout the evening. The event would begin at 6 p.m. and end at 9 p.m.

The Applicant requests permission to set one feather flag outside the storefront, as well as one canopy and five high-topped tables for guests. The event would also include a musician who would be located against the window just outside the storefront. No parking concessions are requested and parking would operate under normal Town standards.

The completed Application was submitted on September 18 and amended on October 3, 2024. When initially submitted, the Application fell just inside the 60-day window for the initially requested date. The Applicant has paid the \$275 late fee. Once the date was amended, this brought the Applicant back within the required 60-day window.

The Applicant requests a waiver of the application fee as a courtesy for a Town business. Town Staff suggests reducing the fee to the initial charge of \$125.

Staff recommends approval of the Application based on the conditions outlined in the permit, and requests consideration of the application fee waiver.

Mayor Malkoon advised that he was in favor of waiving the late fee for the application, but not the regular \$125 fee, in order to remain consistent for what is done for other Town businesses. Commissioners DeNapoli and Graziano agreed with this as well.

Commissioner Graziano made a motion, seconded by Commissioner DeNapoli, to charge the \$125 application fee, refund the late fee, and approve the Special Event Application, based on the conditions in the Staff Report. Motion carried 4-0.

The Commission took a brief recess at this time.

14. COMMISSIONER PRESENTATIONS

Commissioner DeNapoli stated that based on his review of the video of meetings discussing the Town's Friday Night Music Series, he would like to ensure the record is

set straight on this issue. He distributed copies of the regular Commission meeting minutes from the September 26 and October 17, 2023 meetings, pointing out that these records show an expectation by the Commissioners, and a commitment made by the business community, for the businesses to contribute \$5000 toward the Town for each night of the Friday Night Music Series.

Commissioner DeNapoli continued that at the September 18, 2024 budget meeting, the Commission had further discussed the Friday Night Music Series for the upcoming 2024-2025 fiscal year. This discussion included the mention of a check for \$15,000, which would come from a vendor used by the businesses.

The issue arose once more at the Commission's October 8, 2024 meeting. Commissioner DeNapoli had asked at that time whether or not there was the expectation of a contribution from the business community as well. He was advised at that time that there was no such expectation; however, the word "commitment" was used in reference to a contribution of \$5000 per event.

Commissioner DeNapoli reviewed the following timeline from previous Commission meetings:

- September 26, 2023: the Commission voted 4-1 against continuing the Friday Night Music Series and return it to the private entities which had originally held these events; some Commissioners referenced a "lack of financial support" from the Downtown businesses as one reason for their decision
- October 17, 2023: the Friday Night Music Series was reconsidered, at which time a member of the business community indicated that the businesses would partner to raise the money for these events, leveraging relationships with vendors to raise a minimum of \$25,000; the businesses also committed to contribute \$5000 per event, with the possibility that this amount could increase in the future; the Commission then voted to approve the Friday Night Music Series, although no funding was collected at the time, as there was no procedure for its collection

Commissioner DeNapoli stated that four Friday Night Music Series events were held in FY 2023-2024, and the Town has since received the \$15,000 check from the vendor to cover a portion of these costs.

For FY 2024-2025, the Town has received \$2000 from the businesses. At the October 8, 2024 meeting, the Commission voted 3-2 to hold five Friday Night Music Series events. Commissioner DeNapoli asserted that the businesses had made a commitment

with the intent of convincing the Commission to change their vote from denial to approval of the event. He added that more recent discussions of the issue were based on incorrect information, recalling that he had asked whether or not there was an expectation that the businesses would provide a contribution. He felt having all the information at that time would have changed the way he had perceived the question and voted on the issue.

Commissioner DeNapoli pointed out that the funds for the 2024-2025 Friday Night Music Series have not yet been provided by the businesses. He concluded that, as he had voted in the affirmative at a previous meeting, he would like to request reconsideration of that vote, given that the information he has compiled differs from what was previously stated.

Commissioner DeNapoli suggested that additional discussion of the Friday Night Music Series could propose that the Town fund three events while the businesses fund the remaining events. More events could be considered if the business community provides additional funding.

Commissioner DeNapoli also pointed out that another means of collecting funds from the business community could be to add an additional \$1 per foot to the lease of outdoor dining space, as this would help to spread the cost more widely among businesses. He acknowledged, however, that this would only apply to dining establishments who use outdoor space.

Commissioner DeNapoli made a motion to reconsider the previous vote based on the information provided.

Mayor Malkoon requested clarification of the amount to which the businesses had committed. Commissioner DeNapoli stated that at the October 17, 2023 meeting, the audio recording of the meeting includes the statement "We were able to raise a minimum of \$25,000. Right now we have committed \$5000 per event" at the 29-minute mark.

Commissioner DeNapoli continued that he would recommend holding more than three Friday Night Music Series events in FY 2024-2025 if \$5000 per event is provided. At present, the businesses have offered \$2000 and the Commission has committed to five events thus far. He reiterated that it was stated at the previous Commission meeting that there was no expectation of further financial commitment from the businesses, which was found to be inaccurate in light of his research.

Commissioner DeNapoli further clarified that there is only the expectation of a further commitment rather than a contract, adding that the entities who would provide the funding have not been identified; however, he asserted that the Commission had voted to hold the Friday Night Music Series with the expectation that \$25,000 was pending.

Mayor Malkoon requested clarification of which Commissioners had voted in favor of or against the October 8, 2024 motion, as a motion and second to reconsider must be made by an individual who had voted on the prevailing side. Commissioner DeNapoli replied that he, Vice Mayor Strauss, and Mayor Malkoon had voted in favor of the motion.

Mayor Malkoon ceded the gavel to Vice Mayor Strauss at this time.

Mayor Malkoon seconded the motion.

Vice Mayor Strauss stated that while he did not dispute Commissioner DeNapoli's findings, his recollection was that the gist of the 2023 discussion was that the businesses "have some skin in the game" and participate in funding the event. He did not recall asking for a specific amount of this contribution.

Commissioner DeNapoli advised that Mark Falsetto, representing Taco Craft, had specifically proposed \$5000 per event.

Vice Mayor Strauss continued that he had expected a token contribution. He felt it was incumbent upon the Town to hold the events, and the Commission's intent had been to encourage the businesses to show some interest in committing to the events. He also recalled that representatives of some Downtown businesses had previously come before the Commission to state that they were not making any money on the events, which influenced the Commission's original vote to deny funding.

Vice Mayor Strauss continued that the businesses do benefit from the events, as do residents of the Town. The Town also benefits from parking revenue, participation of visitors, and other practical ways. He cautioned against cancelling the events due to a disagreement over the amounts paid by the businesses.

Vice Mayor Strauss also noted that non-restaurant businesses benefit from the events. He recalled that his initial proposal, more than one year ago, was for all businesses to participate in the events by some token amount. He also noted, however, that not all

businesses participate in the events or are open at night. For this reason, he did not feel a blanket statement should be applied to every restaurant. Smaller businesses may also lack sufficient funds to participate by more than a token amount.

Vice Mayor Strauss also pointed out that he was not clear on whether the \$2000 proposed at the previous meeting was intended to apply to the 2023-2024 or the 2024-2025 Friday Night Music Series. Town Manager Connors indicated that this amount was intended to be used in FY 2024-2025.

Vice Mayor Strauss concluded that the contributions toward last year as well as the current year showed good faith by the businesses. He felt participation in the event was more important than specific amounts that were cited in previous discussions, particularly as no contract was drafted between the Town and the restaurants. He added that residents have expressed enthusiasm for the events and would be discouraged if the Commission rescinds its approval.

With regard to funding three events rather than five, Vice Mayor Strauss pointed out that this would create a dilemma for Events and Marketing Manager Anderson in her capacity as planner, recalling that the events are booked months in advance.

Mayor Malkoon commented that his recollection had been that the businesses had offered a commitment to “half the costs,” which was also the recollection of former Mayor Chris Vincent. He also recognized the public benefit of the events.

Commissioner Graziano stated that he has received several calls from residents indicating that they did not want their tax dollars [to](#) pay for the events. He pointed out that the Town has already collected a minimum of \$5000 per event. It was clarified that the payment already received had been intended toward the previous fiscal year’s events; the businesses have contributed \$2000 toward the 2024-2025 Friday Night Music Series.

Commissioner Graziano asserted that in September 2023, the businesses made a commitment to pay for events that have already been held. He continued that the current question is whether or not the businesses are reliable partners. He did not feel \$2000 was sufficient to show the businesses’ interest in moving forward with the events.

Commissioner DeNapoli also recognized that there is a public benefit to the Friday Night Music Series; however, he did not feel this was the point of the discussion. He reiterated that the Commission had voted with incorrect information when they voted to

approve the 2024-2025 events. He noted that the Commission could vote now to reduce the number of events and revisit the matter before the end of the calendar year, which he felt would provide Staff with enough time to add events in April or May 2025.

Commissioner DeNapoli again stated that his earlier vote had been contingent upon the information provided at the previous meeting, which had not been accurate. He pointed out that this commitment had been the basis for the Commission to vote once more on the topic in 2023 and approve the Friday Night Music Series rather than denying it.

Commissioner DeNapoli reiterated his recommendation for the Town to fund at least three events, with a plan in place to hold more events depending upon further contributions.

Mayor Malkoon requested that the Commission vote upon the **motion** to reconsider.

Motion carried 3-1 (Vice Mayor Strauss dissenting).

Town Attorney Trevarthen advised that a vote to reconsider typically means the Item will be presented for further discussion and/or action at the next meeting. They may also agree, by either consensus or a vote, to waive that procedure and continue discussion of the issue at tonight's meeting.

Commissioner DeNapoli made a motion, seconded by Mayor Malkoon, to waive the procedure of putting the Item on the next meeting Agenda, instead discussing it now.

Vice Mayor Strauss stated that he felt it is important for Commissioner Pouloupoulos to be present for further discussion on this issue. With respect to the discussions of September and October 2023, he advised that he would need to review those meetings, as he was not certain one restaurateur had spoken for multiple Downtown businesses when offering \$5000 per event.

Commissioner DeNapoli read from the transcript of the October 17, 2023 meeting, which included a statement from Mark Falsetto of Taco Craft indicating that the businesses would raise the money through partnerships spearheaded by the proprietor of Aruba Beach Café and leveraging relationships with vendors. Mr. Falsetto had stated the businesses were able to raise \$25,000 and have committed \$5000 per event.

Vice Mayor Strauss observed that those statements indicated to him that Taco Craft and Aruba Beach Café planned to leverage relationships with their vendors. He did not feel it applied to every Downtown business. He also pointed out that neither those two business owners nor the vendors mentioned were present at that meeting.

With regard to waiving the requirement to discuss the events at the next Commission meeting, Vice Mayor Strauss again asserted that a vote on the issue should wait until all Commissioners are present due to the importance of the decision.

Mayor Malkoon explained that he had characterized the discussion as urgent due to the need for a decision to be made so Events and Marketing Manager Anderson may book acts in advance of the events. He suggested that she book the first three events, with the possibility of booking more events in the future once the discussion has concluded.

Events and Marketing Manager Anderson advised that while there is no hard deadline for booking the events, further delay may make it less likely to book quality performers. She concluded that it could be helpful for the Commission to indicate which of the proposed event dates they would like to establish at this time so quality bands can be booked for those dates.

Vice Mayor Strauss noted that selecting three dates would presume that the Commission will approve at least three events, which he did not feel was a certainty. He again asserted that he would like the full Commission to be present to discuss and vote on the issue.

Commissioner DeNapoli recalled that Commissioner Pouloupoulos had made it clear he did not want the Town spending taxpayer dollars on the Friday Night Music Series. He observed that further delay would make scheduling the events more difficult.

Commissioner DeNapoli also stated that his proposal was not in favor of reducing the number of events, but that the Town start with three events and bring the issue back for consideration of two additional events at a later date, possibly with the business community offering further funding going forward.

Commissioner Graziano pointed out that the discussion is not focused on cancelling the Friday Night Music Series, but on how to go forward with the events. He emphasized that he was also not in favor of acting in the absence of a full Commission, noting that it is possible for continued discussion to change minds.

Commissioner Graziano continued that he was not certain there was a need to book acts significantly in advance, as he felt all dates could be filled with “some kind of music” even if they did not feature the most-desired acts. He stated again that residents who have contacted him have indicated they were not in favor of funding an event that was previously funded by the businesses that benefited from it.

It was clarified that should the motion to waive the procedure fail, the issue would be placed on the next meeting Agenda.

Commissioner DeNapoli expressed concern for how a delay in the discussion would affect Events and Marketing Manager Anderson’s planning, pointing out that the next Commission meeting is scheduled for November 12, 2024. Events and Marketing Manager Anderson confirmed that the Commission’s decision on the number of events could affect who is contracted, based on ability and preference, but advised that she would wait until after the November 12 meeting to sign any agreements with performers.

Vice Mayor Strauss pointed out that if the discussion had been listed on tonight’s Agenda, representatives of the Town businesses would have attended the meeting, as they are affected by the issue at hand. He also felt other residents would have attended to have their voices heard regarding the Friday Night Music Series. He felt it was improper and disingenuous to have brought this discussion forward without public notice, and could subvert the will of the Town’s residents.

Vice Mayor Strauss concluded that he did not believe it would be improper to table this discussion and decision until the next meeting to give residents an opportunity to speak. He asserted that the Commission should delay any action until at least the next meeting so the Commissioners may review the issue properly and hear from residents and business representatives.

Commissioner DeNapoli replied that he did not feel it was either improper or disingenuous to bring forward the issue, as it had been presented without accurate information at the October 8 meeting. He stated that if the Commission could agree to hold three Friday Night Music Series events, this would guarantee at least those three performances while further discussing the option to hold two more performances at the next meeting.

Commissioner Graziano requested clarification of how much it would cost the Town to hold three events. Town Manager Connors recalled that the Town budgeted approximately \$10,000 per event for a total allocation of \$50,000 in the FY 2024-2025

budget. She also confirmed that \$2000 was provided by the businesses after the October 8 meeting.

Commissioner Graziano commented that this would bring the budget for three Friday Night Music Series events to a total of \$28,000. The Commission could revisit the issue at their next meeting and determine whether or not to add more events.

Motion to waive the procedure carried 3-1 (Vice Mayor Strauss dissenting).

Motion made by Commissioner DeNapoli, seconded by Vice Mayor Strauss, to have three events and then to bring the issue up at the next meeting to discuss additional events. Motion carried 4-0.

Mayor Malkoon recommended sending an email to the appropriate businesses informing them of what was discussed at tonight's meeting, as well as when it would be discussed again by the Commission.

Town Manager Connors asked if the Commission would like Events and Marketing Manager Anderson to move forward with booking bands for three events in 2025. The Commissioners determined by consensus that the Friday Night Music Series events should be booked for the months of January, March, and April 2025.

Mayor Malkoon added that backup information will be provided on this issue for the benefit of Commissioner Pouloupoulos as well as interested residents, and that businesses would be contacted to let them know further discussion was planned. He proposed that it may be possible for the businesses to seek corporate sponsorship of the events.

Vice Mayor Strauss suggested it could also be helpful to provide a video clip of Marc Falsetto's proposal from the October 17, 2023 meeting.

15. COMMISSIONER COMMENTS

Commissioner Graziano thanked Town Staff for clarifying that the recent federal holiday celebrated on Monday, October 14, 2024 recognized both Columbus Day and Indigenous Peoples Day.

Commissioner DeNapoli encouraged any individuals who need a vote-by-mail ballot to request one at BrowardVotes.gov no later than Thursday, October 24, 2024 at 5 p.m.,

and pointed out that this ballot will include a ballot initiative to move the Town's elections from March to November in the future. He urged residents to make a plan for voting, adding that if a vote-by-mail ballot is mailed on Election Day, it may not be delivered in time to be counted.

Vice Mayor Strauss also encouraged residents to vote, and wished all present a happy Sukkot. He advised that the Town's Veterans Day celebration will be held on November 11, 2024 at 10 a.m. in El Prado Park.

Vice Mayor Strauss added that he also recently toured the Town's public safety facilities, and expressed concern that these buildings are not up to modern standards. He emphasized that the Town should provide its first responders with a proper public safety facility, and hoped to work toward a new and better building during the remainder of his tenure on the Commission.

Mayor Malkoon stated that he will host Broward County Commissioner Lamar Fisher for a district-wide Mayors' breakfast on October 23, 2024 in Jarvis Hall. He also looked forward to the upcoming holiday and events season, and encouraged all residents to vote in the upcoming election.

16. ORDINANCES 1ST READING

- a. Ordinance 2024-09 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, DELETING CHAPTER 30, ARTICLE XI, “SEAGRAPE DRIVE SIDEWALK PLAN” FROM THE TOWN OF LAUDERDALE-BY-THE-SEA CODE OF ORDINANCES PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.**

At this time Mayor Malkoon opened public comment, which he closed upon receiving no input.

Development Services Director Campbell stated that the purpose of this Ordinance is to repeal Chapter 30, Article XI, which includes the Seagrape Drive Sidewalk Plan. This Plan was adopted in 2005, only one property has been required to comply with it. Staff requests deletion of this provision.

Commissioner DeNapoli made a motion, seconded by Vice Mayor Strauss, to delete the provision. Motion carried 4-0.

17. ORDINANCES 2ND READING

- a. **Ordinance No. 2024-10 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, AMENDING CHAPTER 18, “TAXATION AND FINANCE,” ARTICLE V, “INVESTMENT PLAN,” OF THE CODE OF ORDINANCES TO AMEND AUTHORIZED INVESTMENTS, QUALIFICATIONS OF FINANCIAL INSTITUTIONS AND DESIGNATION OF PRIMARY INVESTMENT OFFICER; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.**

At this time Mayor Malkoon opened public comment, which he closed upon receiving no input.

Director of Budget and Finance Lang requested that the Commission approve Ordinance 2024-10 as presented for second reading. She added that she will discuss the Item further with the Town Attorney’s Office and determine whether or not any updates need to be done at a later date.

Commissioner DeNapoli made a motion, seconded by Commissioner Graziano, to approve. Motion carried 4-0.

18. RESOLUTIONS – PUBLIC COMMENTS

- a. **Resolution 2024-45 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, ADOPTING THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) CYBERSECURITY FRAMEWORK AS THE TOWN’S CYBERSECURITY STANDARDS IN COMPLIANCE WITH SECTION 282.3185, FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO ADOPT AND IMPLEMENT CYBERSECURITY POLICIES CONSISTENT WITH THE NIST CYBERSECURITY FRAMEWORK; PROVIDING FOR IMPLEMENTATION AND AN EFFECTIVE DATE.**

At this time Mayor Malkoon opened public comment, which he closed upon receiving no input.

Deputy Town Manager/Public Works Director Rubach explained that this Resolution is mandated by the Florida Legislature and requires the implementation of minimum cybersecurity standards. Once the Resolution is approved, it will be reported to the state, and the Office of the Inspector General may request a copy.

Commissioner Graziano made a motion, seconded by Commissioner DeNapoli, to approve. Motion carried 4-0.

- b. Resolution 2024-46 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PIGGYBACK AGREEMENT WITH KILOWATT ELECTRIC COMPANY FOR LICENSED ELECTRICAL CONTRACTOR SERVICES UTILIZING THE TERMS AND CONDITIONS OF THE CITY OF CORAL SPRINGS, CONTRACT AWARDED PURSUANT TO INVITATION TO BID NO. 23-B-013F; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PIGGYBACK AGREEMENT; PROVIDING FOR IMPLEMENTATION AND FOR AN EFFECTIVE DATE.**

At this time Mayor Malkoon opened public comment, which he closed upon receiving no input.

Deputy Town Manager/Public Works Director Rubach recalled that the Commission originally approved an agreement with Kilowatt Electric Company in 2020 for the installation of major items, including bollards and other electrical work, which typically fall outside the Town Manager's purchasing limits. There are upcoming projects which will require the use of a similar contract.

Commissioner DeNapoli made a motion, seconded by Vice Mayor Strauss, to approve. Motion carried 4-0.

- c. Resolution 2024-47 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN AGREEMENT WITH FLYNN ENGINEERING SERVICES, P.A. FOR TOWN ENGINEERING SERVICES PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-02; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.**

At this time Mayor Malkoon opened public comment, which he closed upon receiving no input.

Deputy Town Manager/Public Works Director Rubach recalled that at the September 12, 2024 Commission meeting, the Commission authorized the Town Manager to negotiate a contract with Flynn Engineering, which was ranked as the #1 respondent to the request for qualifications (RFQ). He noted that there is no contractual increase for the first four years of the contract. A 5% increase will apply in the fifth year of the contract, and if the contract is renewed, the contractor would receive a consumer price index (CPI) increase or 5%, whichever is less. Terms are included establishing guidelines for timeliness and responsiveness when reviewing plans.

Commissioner Graziano stated that he felt five years is too long of a contractual obligation, and recalled that at the September 12 meeting, he had instead suggested two years. He did not believe the Town should write any contracts for five years or longer, and instead proposed that the Commission approve a contract for two years with two optional renewals.

Commissioner DeNapoli pointed out that a five-year contract locks in rates for the entirety of that term. Deputy Town Manager/Public Works Director Rubach confirmed that under the proposed contract, the Town would not see an increase in the contractor's hourly rates until the fifth year of the contract.

Commissioner Graziano asserted that a two-year contract would be preferable with the CPI increase for the last two years, as he was not in favor of a lengthier contract.

Motion made by Vice Mayor Strauss, seconded by Commissioner DeNapoli, to approve. Motion carried 3-1 (Commissioner Graziano dissenting).

- d. Resolution 2024-48 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING THE PURCHASE OF REPLACEMENT HARDWARE PURSUANT TO A PIGGYBACK AGREEMENT WITH DSS MANAGEMENT OF FLORIDA, LLC, DBA EVOLVTEC FOR CCTV SECURITY CAMERA MAINTENANCE SERVICES; AUTHORIZING THE TOWN MANAGER TO EXPEND ANY ADDITIONAL TOWN FUNDS WITHIN THE MANAGER'S PURCHASING AUTHORITY BUDGETED FOR THIS PROJECT; PROVIDING FOR IMPLEMENTATION AND AN EFFECTIVE DATE.**

At this time Mayor Malkoon opened public comment, which he closed upon receiving no input.

Deputy Town Manager/Public Works Director Rubach recalled that at the October 8, 2024 meeting, the Commission approved a piggyback contract with Evolvtec. Within that contract are two sections the Town can use: the 18% cost markup for equipment, and the hourly rate. Use of this contract would save roughly \$13,000, or 16%. The contract is for Phase 2 of the Town's security camera project and will ensure all current cameras are in working order. The system is expected to be at 100% function by the end of January 2025.

Commissioner DeNapoli made a motion, seconded by Vice Mayor Strauss, to approve. Motion carried 4-0.

19. QUASI JUDICIAL PUBLIC HEARINGS

None.

20. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 9:26 p.m.

Mayor Edmund Malkoon

ATTEST:

Katrina Adler, Town Clerk

Date



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Linda Connors, Town Manager

Submitting Department: Administration

Item Type: Presentation

Agenda Section: OLD BUSINESS

Subject Title: 75th Anniversary Garden

Explanation: On June 11, the Town Commission approved staff moving forward with concepts for a contemplative garden to enhance the southern area of Town Hall campus near the bee apiary. This new landmark space will help create an additional sense of place, truly embracing the Town's motto "Relax...you're here." During the budget meeting, the Commission approved \$100,000 for this 75th Anniversary project in the CIP. Staff has been working with our consultant, Architectural Alliance, to develop the plans further and provide a cost estimate.

To reduce costs, staff will assist in preparing the site for construction and will serve as the project manager. The Garden Club is already responsible for the landscaped area in front of Town Hall and is planning a complete renovation. To further reduce costs of the new garden, staff has arranged with the Garden Club to relocate some of their existing landscape to the new garden. The project's scope will create a "pocket park" that includes new hardscape, landscaping, and several seating options to enjoy. Staff is also looking into collaborating with outside entities to investigate adding an educational component to the garden.

The anticipated budget is \$91,713.19. It is customary to include a 15% contingency for unforeseen expenses for cautionary purposes. With this line item added, the budget total is \$105,470.

Recommendation: Staff recommends approval of the garden budget, so we can start to build it out in FY 24-25.

Exhibits:

1. Anniversary Garden



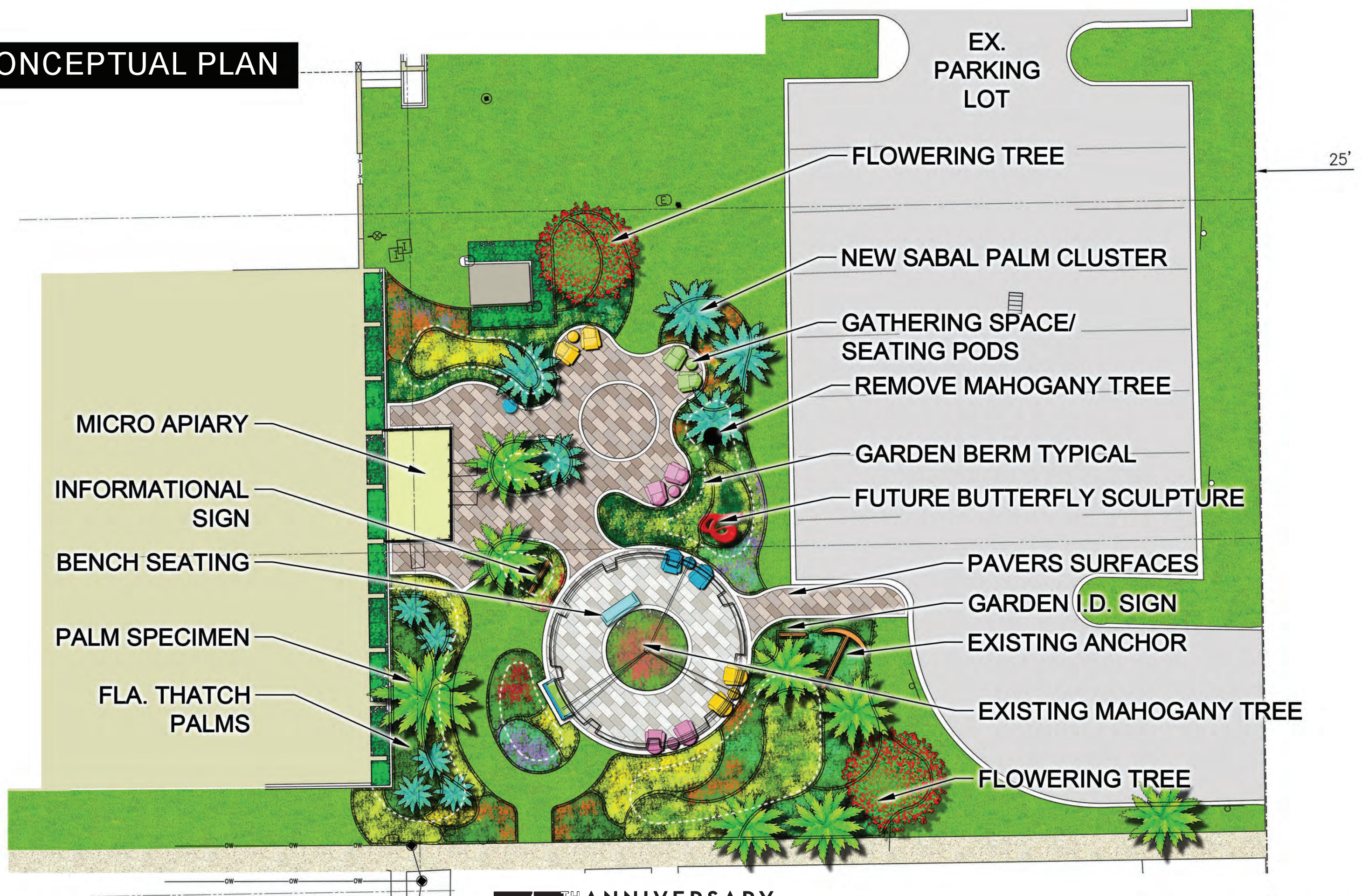
Anniversary *Garden*



EX. CONDITIONS



CONCEPTUAL PLAN



ELEVATION



LEGEND

1. EXISTING MAHOGANY TREE
2. NATIVE PALM SPECIMENS
3. GATHERING SPACE/ SEATING PODS
4. INFORMATIONAL SIGN
5. MICRO APIARY
6. LANDSCAPE BERM (TYP.)
7. EXISTING SIDEWALK
8. EXISTING BUILDING
9. RELOCTED PLANTS



GARDEN CHARACTER



LANDSCAPE BERM

SITE FURNISHING



ENTRANCE TO BUTTERFLY GARDEN

HARDSCAPE PAVING



SHELLOCK
PAVER SIZE
8" x 12" x 1-5/8"
8" x 8" x 1-5/8"

SHELLOCK **CAFE**

SHELLOCK **TAN**

LANDSCAPE LIGHTING



SCULPTURE



GARDEN I.D. SIGN



INFORMATIONAL SIGN



SIGNAGE



PALMS + ACCENT PLANTS



CABBAGE PALM



FLORIDA THATCH PALM



KEY THATCH PALM



CABADA PALM



DESERT CASSIA



YELLOW NECKLACEPOD



SWEET ALMOND BUSH



RED JATROPHA



BANANA SHRUB



PINOT NOIR BROMELIAD



PRIDE OF BARBADOS



WATERMELON PINK JATROPHA

BUTTERFLY GARDENING PLANTS

Butterfly	Larval Host Plant(s)	Adult Food Resources
Black Swallowtail (<i>Papilio polyxenes</i>)	Parsley*, Dill*, Fennel*, Bishopweed	Shrubs Button Bush - <i>Cephalanthus occidentalis</i> Firebush - <i>Hamelia patens</i> Inkberry - <i>Ilex glabra</i>
Cloudless Sulphur (<i>Phoebis sennae</i>)	Cassia, Partridge Pea	Wildflowers Milkweed - <i>Asclepias</i> spp. Florida Paintbrush - <i>Carphephorus</i> spp. Blanket Flower - <i>Gallardia pulchella</i> Sunflowers - <i>Helianthus</i> spp. Blazing Star - <i>Liatris</i> spp. Horsemint - <i>Monarda punctata</i> Fogfruit - <i>Phyla nodiflora</i> Black-eyed Susan - <i>Rudbeckia hirta</i> Sage - <i>Salvia</i> spp. Goldenrod - <i>Solidago</i> spp.
Giant Swallowtail (<i>Heracles cressphontes</i>)	Citrus*	
Gulf Fritillary (<i>Agraulis vanillae</i>)	Passion Vines	
Monarch (<i>Danaus plexippus</i>)	Milkweed, Butterfly Weed	
Orange-Barred Sulphur (<i>Phoebis philea</i>)	Cassia, Partridge Pea	
Pipeline Swallowtail (<i>Battus philenor</i>)	Pipevines	
Polydamus Swallowtail (<i>Battus polydamus</i>)	Pipeline	
Queen (<i>Danaus gilippus</i>)	Milkweed, Twinnine, Milkvine	
Tiger Swallowtail (<i>Papilio glaucus</i>)	Sweet Bay Magnolia, Ash, Black Cherry	
White Peacock (<i>Anartia jatrophae</i>)	Water Hyssop, Turkey Tangle Fogfruit	
Zebra Longwing (<i>Heliconius charithonia</i>)	Passion Vines	

LANDSCAPE SHRUBS



RED FIRECRACKER PLANT



DWARF SCARLET BUSH



ARIZONA SUN BLANKET



WILD LIME



FLORIDA COONTIE



AUTUMN BLUSH TICKSEED



BEACH SUNFLOWER



BUTTERFLY MILKWEED



CONFETTI LANTANA



GOLDEN DEWDROP



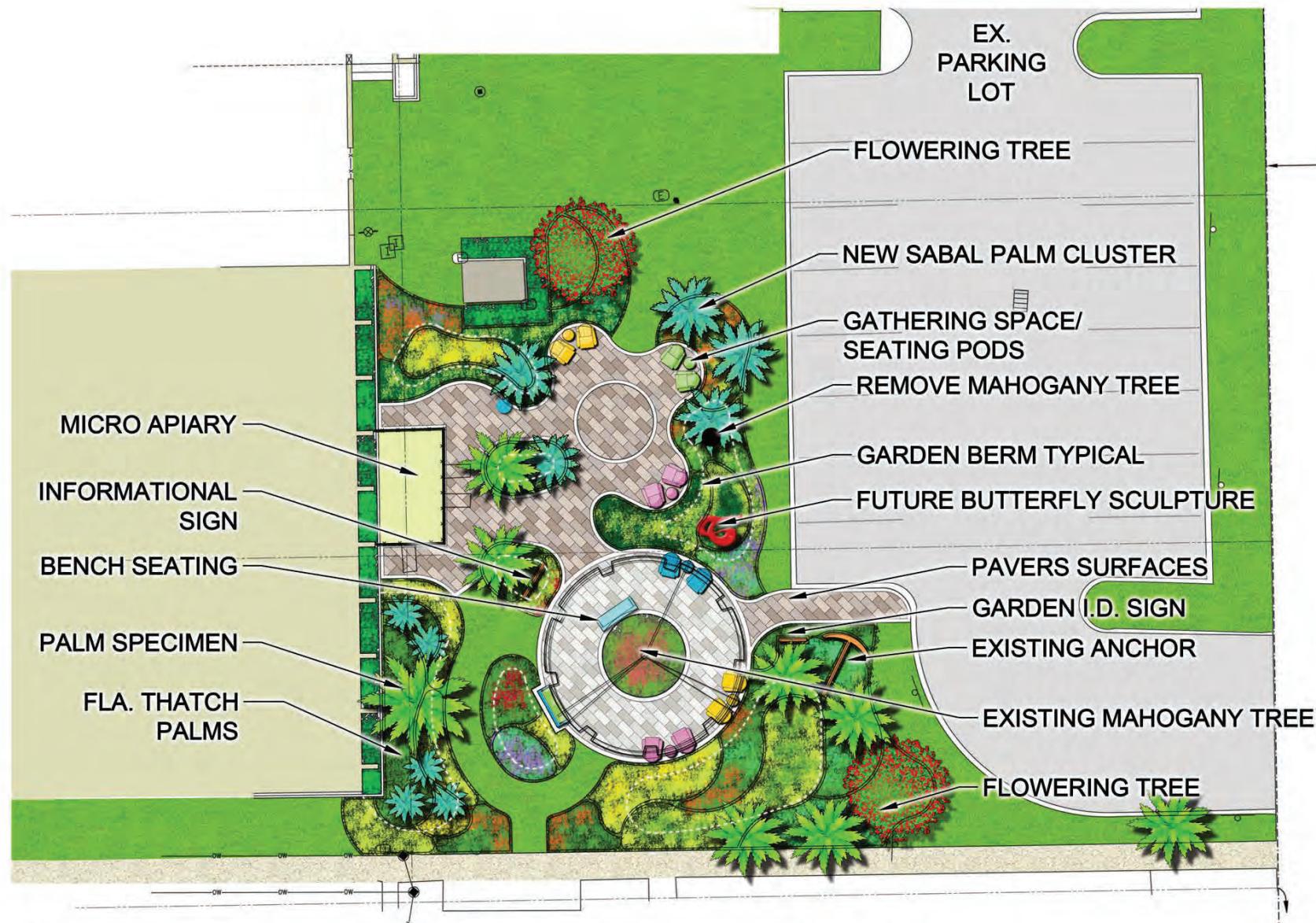
PLUMBAGO



SCORPION TAIL



SUNSHINE MIMOSA



COST BUDGET

BUDGET PROJECTION:

PART "A" ESSENTIAL \$ 59,204.20

PART "B" ALTERNATES \$ 32,508.99

**"A" + "B" GRAND TOTAL
\$ 91,713.19**

15% CONTINGENCY \$ 13,756.98

**GRAND TOTAL W 15% CONTINGENCY
\$ 105,470.17**

PART "A" - ESSENTIAL

A1: DEMOLITION	\$ 6,000.00
A2: HARDSCAPE	\$ 17,500.00
A3: LANDSCAPE	\$ 35,704.20
A4: ALLOWANCE	\$ 0.00
PART "A" TOTAL	\$ 59,204.20

PART "B" - ALTERNATES

B1: LIGHTING	\$15,000.00
B2: SIGNAGE	\$10,000.00
B3: FURNITURE	\$ 7,508.99
PART "B" TOTAL	\$ 32,508.99

NO.	ITEM DESCRIPTION	ITEM DESCRIPTION	COST PER ITEM	U/M	QTY	TOTAL COST	LINE ITEM \$
A1 DEMOLITION							
1	Demo	Site Preparation	\$ 40,000.0	SF	1	\$ 4,000.00	\$ 4,000.00
2	Demo	Tree Removal (Canopy)	\$ 2,000.0	EA	1	\$ 2,000.00	\$ 2,000.00
A2 HARDSCAPE							\$ 6,000.00
3	Hardscape	Sidewalk Paver	\$ 5.5	SF	1750	\$ 9,625.00	\$ 9,625.00
4	Hardscape Installation	Labor Costs Paver Installation	\$ 4.5	EA	1750	\$ 7,875.00	\$ 7,875.00
A3 LANDSCAPE							
5	Landscape w/ Installation	Trees/Shrubs/ Mulch	\$ 27,611.4	-	1	\$ 27,611.36	\$ 27,611.36
6	Landscape Berm	1.25 Ft. Berm	\$ 14.0	C.Y.	85	\$ 1,190.00	\$ 1,190.00
7	Irrigation	Irrigation	\$ 6,902.8	-	1	\$ 6,902.84	\$ 6,902.84
A4 ALLOWANCE							\$ 35,704.20
8	Miscellaneous		\$ -	EA	1	\$ -	\$ -
9	Miscellaneous		\$ -	EA	0	\$ -	\$ -
10	Miscellaneous		\$ -	EA	0	\$ -	\$ -
GRAND TOTAL							\$ 59,204.20
15% CONTIGENCY							\$ 8,880.63
(Include 15% Contingency) GRAND TOTAL							\$ 68,084.83

PART B: ALTERNATES							
NO.	ITEM DESCRIPTION	ITEM DESCRIPTION	COST PER ITEM	U/M	QTY	TOTAL COST	LINE ITEM \$
B1 LIGHTING							
11	Lighting	Landcape Lighting (12 Voltage) and Labor Costs	\$ 15,000.0	EA	1	\$ 15,000.00	\$ 15,000.00
B2 SIGNAGE-ART							\$ 15,000.00
12	Furnishing - Signage	Information Directional Sign	\$ 8,000.0	EA	1	\$ 8,000.00	\$ 8,000.00
13	Furnishing - Signage	Garden I.D. Sign	\$ 200.0	EA	10	\$ 2,000.00	\$ 2,000.00
B3 SITE FURNITURE							
14	Furnishing	Basic Bench 18"H X 48"W X 15"D	\$ 460.5	EA	2	\$ 921.00	\$ 921.00
15	Furnishing	Trash Receptacle	\$ 636.7	EA	1	\$ 636.65	\$ 636.65
16	Furnishing	Pod Lounge Chair "Classic Adirondack"	\$ 426.9	EA	12	\$ 5,123.16	\$ 5,123.16
17	Furnishing	Pod Side Table	\$ 138.0	EA	6	\$ 828.18	\$ 828.18
B4 MISCELLANEOUS							\$ 7,508.99
18	Additional Labor Costs	Shrub Rrelocation by Volunteers	\$ -	EA	0	\$ -	\$ -
19	Additional Labor Costs		\$ -	EA	0	\$ -	\$ -
ALTERNATES TOTAL							\$ 32,508.99
15% CONTIGENCY							\$ 4,876.35
(Include 15% Contingency) ALTERNATIVES TOTAL							\$ 37,385.34

PART A + PART B TOTAL

\$ 91,713.19

\$ -

15% CONTIGENCY

\$ 13,756.98

(Include 15% Contingency) PART A + PART B GRAND TOTAL

\$ 105,470.17

\$ -





75TH ANNIVERSARY
GARDEN
LAUDERDALE BY THE SEA, FLORIDA



75TH ANNIVERSARY
GARDEN
LAUDERDALE BY THE SEA, FLORIDA



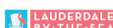
75TH ANNIVERSARY
GARDEN
LAUDERDALE BY THE SEA, FLORIDA



75TH ANNIVERSARY
GARDEN
LAUDERDALE BY THE SEA, FLORIDA



**75TH ANNIVERSARY
GARDEN**



75TH ANNIVERSARY
GARDEN
LAURELLE BY THE SEA, FLORIDA



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Courtney Easley, Assistant to Town Manager

Submitting Department: Administration

Item Type: Presentation

Agenda Section: OLD BUSINESS

Subject Title: Circuit Funding Discussion

Explanation:

The Town began a micro-transit transportation program with Circuit in March 2023. The program includes two vehicles funded by the Town and a third vehicle that is funded by the City of Fort Lauderdale which extends the service area throughout the Town and to the Galt Ocean Mile and Coral Ridge Mall located west of the Oakland Park Boulevard Bridge. The micro-transit program is successful with over 40,500 rides being taken in FY24. The cost for the program is \$242,179 which is funded through the Town's general fund. The Town Commission directed staff to explore options to offset the cost of operating Circuit, and the staff explored options follow.

Broward County Surtax Funding

There is no surtax funding available to offset costs of Circuit this fiscal year. Circuit replaced a rarely used shuttle that was fully funded by the County transportation surtax passed by the voters in 2018. In July 2023, the Town Manager sent a letter to the Broward County Mobility Advancement Program (MAP) Administrator requesting the Town's portion (\$78,500) of the Surtax funding that was allocated to the community shuttle (Pelican Hopper) be given to the Town to cover costs related to Circuit. She also requested future costs of the Circuit be funded through the Surtax program. The County responded that Circuit services did not qualify as an existing or improved community shuttle service and did not meet state and federal requirements articulated in the Community Shuttle service agreement. Therefore, the funds could not be reallocated or funded in the future.

The Broward City County Managers Association has been working since 2022 with the County administration to draft a 3rd Amendment to the Surtax Interlocal Agreement that would in part allow micro-transit programs to be eligible for surtax funding. The County expects to bring a draft amendment to the municipalities for consideration in 2025. County Commissioner Fisher supports including micro-transit as an eligible program for surtax funding and staff has been advised that this option will be included in the proposed 3rd ILA amendment.

Grants

The Circuit grants team, Town staff, and RMPK, the Town grant consultant, researched transportation grant opportunities offered through federal and state agencies. Two state discretionary grant programs are available to municipalities. However, the funding only covers increases to existing programs and does not fund existing services. To-date, there have been no grants identified that would reduce the current costs of the Circuit program, but we will continue to look for these opportunities.

Advertising

The Town has the option to sell space on the exterior or interior of the vehicles for the display of commercial advertising to raise revenue to partially finance the cost of the services. If this option is elected, Circuit will credit our monthly invoice by 1/12 of the annual minimum guaranteed advertising revenue. Circuit estimated that the Town could generate approximately \$6,000 annually in advertising revenue to offset the program's cost. While staff is always looking for opportunities to reduce costs, the small amount of credit generated by the advertising is not, in the staff's opinion, worth the value. Currently, the Circuit vehicles reflect the Town's image and brand through the use of our pelican logo and colors. Advertising on Circuit vehicles would eliminate this Town branding opportunity. Additionally, vehicular advertising is currently prohibited by the Town's code. While the Town may be able to choose to do so, it has historically chosen not to because of the impact of aesthetics on the Town and, if we do choose to do this, it may increase the pressure from others to allow them to do so as well.

Ridership Fee

Circuit provides an option of charging fares for rides. The Town could opt to charge \$1.00 or \$2.00 per ride or per passenger. Of the five Broward County communities that utilize Circuit, two have established a \$2.00 fee (Exhibit 1). Circuit has found that communities that have a fee experience a slight drop in users, since they may opt to walk if their destination is nearby. Canceled calls are also significantly reduced. This reduction often results in a slight decrease in wait times.

Last year, Circuit provided 40,500 rides with 82,000 passengers in Lauderdale-By-The-Sea. Using this information and anticipating a 10% decrease in ridership and including administrative charges, the Town could expect approximately \$30,000 if we established a \$1 fare, or \$60,000 if we established a \$2 fare per ride.

Conclusion

Based on the options listed above, staff recommends continuing funding Circuit for FY25 in the Town's budget while awaiting the outcome of the 3rd Amendment to the Surtax Interlocal Agreement. The amendment is proposed to include micro-transit as an eligible program for surtax funding.

Recommendation: Provide staff direction on establishing a fee and allowing advertising on Circuit vehicles.

Exhibits:

1. Circuit Fares in South Florida

Ex. 1

Circuit Fares in South Florida	
Broward County	Fare Per Rider
Lauderdale-By-The-Sea	Free
Fort Lauderdale	Free
Hollywood	\$2.00
Pompano Beach	Free
Wilton Manors	\$2.00
Palm Beach County	
Boca Raton	\$2.00
Boynton Beach	\$1.00 Zone 1 \$2.00 Zone 2
Lake Worth Beach	\$1.00
West Palm Beach	\$1.00 - \$4.00



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Linda Connors, Town Manager

Submitting Department: Administration

Item Type: Presentations

Agenda Section: OLD BUSINESS

Subject Title: Friday Night Music

Explanation: At their October 8, 2024, meeting, the Commission approved five Friday night music events for FY25, to be scheduled monthly from January to June. Each event costs approximately \$10,000 and the approved budget included \$60,000 for these events.

On October 22, 2024, Commissioner DeNapoli requested the Commission reconsider the vote from the prior meeting. He reviewed minutes from the discussions that led to the prior Commission's decision on October 17, 2023 to continue the downtown music events, and concluded that their decision was based on the businesses supporting the program with \$25,000. This historical information was not included in the item or vote on October 8th, and he believed that the omission was integral to the vote.

Other Commissioners expressed their views, including Vice Mayor Strauss who gave his insights from having been part of that 2023 vote. After a lengthy discussion, the Commission voted to (a) approve three events on January 24, February 28, and March 28 so that staff could proceed immediately with booking talent for those dates, and (b) reconsider the October 8 vote approving the additional two concerts at their next meeting. Per Commissioner DeNapoli's request, the minutes from the 2023 Commission meetings where the music series was discussed that he handed out at the last meeting are attached for the Commission's review.

The request before the Commission tonight is therefore to reconsider the vote to approve the two additional downtown music events for April and May of 2025. Since the Commission last met, the Town has received a \$15,000 check that was coordinated by Aruba Beach Cafe to serve as the business' support of last year's music series. The Town has also received \$2,000 from four downtown businesses to support the music series for the coming year.

Recommendation: Town staff has implemented the Commission's direction at the October 22 meeting to proceed with booking talent for and organizing the January, February and March Friday night music events as originally approved on October 8.

Staff recommends that the Commission reconsider its October 8 decision to approve the two additional events in April and May 2025, and provide direction to staff how to proceed. As noted previously, any additional delay is likely to impact the quality of talent that we will be able to line up for these two events if they are confirmed.

Exhibits:

1. 01-10-23 Regular Commission Meeting
2. 06-27-23 Commission Workshop Minutes
3. 09-26-23 Regular Commission Minutes
4. 10-17-23 Regular Commission Meeting



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, January 10, 2023
6:30 PM**

1. CALL TO ORDER, MAYOR CHRIS VINCENT

Mayor Chris Vincent called the meeting to order at 6:35 p.m. Also present were Vice Mayor Edmund Malkoon, Commissioner Alfred “Buz” Oldaker, Commissioner Theo Pouloupoulos, Commissioner Randy Strauss, Town Manager Linda Connors, Town Attorney Susan Trevarthen, Deputy Town Manager/Public Works Director Ken Rubach, Assistant to the Town Manager Courtney Easley, Director of Budget and Finance Lucila Lang, Development Services Director Jhanelle Campbell, Special Events and Marketing Manager Debbie Hime, Special Events and Marketing Coordinator Katie Anderson, and Town Clerk Katrina Adler.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

Pauline Brooks McGuinness gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

None.

5. PRESENTATIONS

a. Christmas-By-The-Sea Recap

Special Events and Marketing Manager Debbie Hime showed a video of the Town’s Christmas-By-The-Sea event, which was held on December 7, 2022. She thanked all who participated in making this annual event a success. Sponsors provided a total of \$20,500, which represents a 63% increase.

6. PUBLIC COMMENTS

At this time Mayor Vincent opened public comment.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

Bob Harrington, resident, expressed concern with traffic passing through crosswalks while pedestrians are using them. He asked if there could be an enforcement solution to this issue, or perhaps a change in the timing of the lights.

Howard Goldberg, resident, shared the official Chamber of Commerce Visitors Center Guide with the Commission. He also requested support from the Town in holding a Health Fair in conjunction with Imperial Point Hospital on February 4, 2023, noting that signage will be important in making sure the community is aware of this event.

Mr. Goldberg added that the Town's Downtown businesses are supportive of the Town Manager's efforts to bring Circuit transportation service to Lauderdale-By-The-Sea. He concluded that the Chamber of Commerce is in favor of bringing back Friday night music events Downtown.

Peter Dudley, resident, expressed concern with the damage to the Pier following recent storms. He suggested that the structure could be stabilized in its current form in order to serve as an artificial reef attraction for swimmers.

Kristen Hernandez, journalist, requested information on golf carts driving on A1A, pointing out that these vehicles are not permitted to travel above a certain speed limit and can hold up other traffic. She also requested more information regarding the Town's canal dredging project.

Town Clerk Katrina Adler also read a public comment from resident Ann Marchetti into the record. Ms. Marchetti spoke in favor of the return of Friday night music events Downtown, and thanked the Town Manager and Staff for proposing to organize and fund this recurring event using Parking Fund revenue. She was not in favor of asking the restaurants to contribute to this event, as the return on investment is not yet known.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

Mayor Vincent recommended that Ms. Hernandez speak with Broward Sheriff's Office (BSO) Captain Tom Palmer regarding concerns about speed limits on A1A, and with Deputy Town Manager/Public Works Director Ken Rubach regarding canal dredging. He also addressed Mr. Dudley's comments regarding the Pier, stating that while the Pier will continue to be part of the Town in the future, swimming or diving within 300 ft. of the

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

structure is currently prohibited due to public safety concerns. He requested that all swimmers and divers help to spread this message.

7. PUBLIC SAFETY DISCUSSION

Mayor Vincent requested that BSO Captain Tom Palmer provide an update on the crosswalk concerns expressed by Mr. Harrington during public comment. Captain Palmer advised that over the past year, BSO has increased its traffic enforcement, focusing on pedestrian and bicycle safety. BSO was awarded a portion of grant funds to focus on pedestrian and bicycle safety in certain areas of Lauderdale-By-The-Sea, including the Commercial Boulevard/A1A corridor. He encouraged patience while BSO seeks to address these issues through enforcement.

Captain Palmer continued that with respect to signalization, BSO will need to verify the timing of crosswalk and traffic signalization in specific locations of concern to determine whether a conflict exists. He pointed out that crosswalk signals are on-demand, while light cycles are not.

Mayor Vincent commented that there are also issues with cyclists traveling in the wrong directions on A1A, and suggested that there be educational outreach to some of the hotels along that corridor, as their guests may not be aware of bicycle safety regulations. Captain Palmer replied that BSO has contacts through the Town's businesses and Chamber of Commerce, and can place this information in hotels.

Captain Palmer reminded all present that a "shred-a-thon" and Operation Medicine Cabinet will be held on Saturday, January 14, 2023 in the parking lot of Assumption Catholic Church from 10 a.m. to 1 p.m. Residents are encouraged to bring up to two boxes of documents to be shredded on-site and dispose of any unused prescription medications (sharps not included).

Mayor Vincent also requested an update on the County's e-911 system. Captain Palmer replied that he did not have full information on this issue at present but will provide an update in the future.

8. TOWN MANAGER REPORT

a. Town Manager Report for January 10, 2023

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

Town Manager Linda Connors advised that there is consideration of changing the salary range for the Town's Public Works Staff, as the Town's range is below what other municipalities may be paying.

Town Clerk Adler is currently seeking a new vendor for the Town's Agenda management service, as Staff is not satisfied with the current provider.

The Visitors Center is now open on Saturdays.

A contract will be brought forward for microtransit services through Circuit, which serves other Broward communities. Users may call for service through a mobile app, and a small vehicle roughly the size of a golf cart can bring them Downtown through door-to-door service.

Town Manager Connors announced the coming retirement of Horace Jones, who has worked with the Town's Public Works Department for 20 years. She thanked Mr. Jones for his longtime service.

A special Commission meeting is scheduled for Tuesday, January 24, 2023 at 5:00 p.m. to discuss the potential purchase of a property. This will precede the regular Commission meeting at 6:30. It has also been suggested that a special Commission meeting be held for a Downtown discussion. The Commissioners agreed by consensus to schedule this second special meeting for Wednesday, January 25 at 5:00 p.m.

Development Services Director Jhanelle Campbell has continued to work with the Sea Lord Hotel's architect, builder, and legal counsel on the submittal of applications necessary to amend their Site Plan. There will be a citizen participation meeting in relation to this project, followed by an appearance before the Planning and Zoning Board, once all necessary information has been provided.

9. TOWN ATTORNEY REPORT

None.

10. APPROVAL OF MINUTES

a. Approval of Minutes – 12-13-22 Regular Town Commission Meeting Minutes

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

Commissioner Poulopoulos made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

11. CONSENT AGENDA

a. Resolution 2023-01 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, SETTING TOWN COMMISSION MEETING DATES FOR THE 2023 CALENDAR YEAR

b. 2023 Parking Permits for Turtle Monitoring Organizations

Motion by Vice Mayor Malkoon, seconded by Commissioner Oldaker, to approve the Consent Agenda. Motion carried 5-0.

12. OLD BUSINESS

a. Resolution 2023-02 – A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN AMENDMENT TO THE AGREEMENT WITH R.T.R. FINANCIAL SERVICES, INC. FOR DEBT COLLECTION SERVICES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AMENDMENT TO THE AGREEMENT; PROVIDING FOR IMPLEMENTATION, AND PROVIDING FOR AN EFFECTIVE DATE

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Assistant to the Town Manager Courtney Easley explained that the Town currently uses R.T.R. Financial Services, Inc. to collect unpaid parking citations. Thus far, they have collected \$4300 since May 2020. The Town would like to amend their contract with R.T.R. to add the collection of unpaid garbage, sidewalk café, and cost recovery fees. The current contract is set to expire in July 2024 and provides for a contractor's fee of 15% added to the amount of the debt collected.

Commissioner Strauss made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

13. NEW BUSINESS

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

a. Friday Night Music Events

Special Events and Marketing Manager Hime recalled that for over 15 years, Village Grille and 101 Ocean held Friday night music events from mid-November through May. The cost of these events was prohibitive during the height of the COVID-19 pandemic, and the events were discontinued. Recently, a number of businesses, as well as the Chamber of Commerce, have raised the possibility of bringing back these events. It has been recommended that there would be four music events, one each in February, March, April, and May. Staff has estimated that the cost may be \$10,000 or lower.

As the events were not in the Town's budget for this year, \$50,000 was transferred from auction proceeds to Special Events to cover costs. The setup will be between the two restaurants and will not obstruct traffic in the circle or the north alleyway. Approval is needed for the loss of the 14 parking spots and their revenue from Commercial Boulevard to the alleyway, and cars will need to park on the inside median of the southbound traffic lane. Other costs include three BSO Special Officers, as well as a professional stage, sound, and light crew. Staff requests direction regarding the proposed event.

Vice Mayor Malkoon requested additional information regarding insurance costs, and asked if the Town's current policy covers events of this nature. Special Events and Marketing Manager Hime recalled that this has not been discussed in two to three years. The participating businesses will need to have liquor liability and an additional liquor license as well as an additional certificate of insurance. The Town's policy would cover the events in a similar manner to Christmas-By-The-Sea.

Vice Mayor Malkoon commented that he was in favor of the proposal as a pilot project to determine if it will increase business for the restaurants and other Downtown businesses. If they wish to continue the event on a long-term basis, he suggested that an additional sidewalk café calculation could be determined so businesses can share in the cost of the event. This could be considered as part of the Town's next budget.

Mayor Vincent addressed the Town's insurance, asking if the proposed events would be covered by the Town's current policy. Town Attorney Susan Trevarthen replied that the Town has liability insurance, and can discuss coverage of Downtown events further with their insurance broker. The same risks are assumed for all Town events and additional Town insurance is not necessary.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

Commissioner Oldaker asked if the Friday night music events, like other Town events, could eventually be funded by sponsors. Special Events and Marketing Manager Hime confirmed this, although she noted it has not been discussed in depth. The intent is to advertise all four planned events at the same time.

Commissioner Pouloupoulos asked if there has been outreach to all Downtown businesses to determine whether they are all in agreement regarding the events. He expressed concern that a large group congregating in front of one to two businesses could negatively affect other businesses. He also pointed out the significant steps taken by the Town to support businesses since the beginning of the pandemic, and concluded that there should be some compromise in the future. He agreed with Vice Mayor Malkoon's suggestion of a pilot program with sponsorships.

Special Events and Marketing Manager Hime advised that most attendees of Friday night music in the past do not congregate directly in front of the band, but to move around the street. She further clarified that the businesses will not have outside bars, and alcohol must be purchased inside the restaurants.

Commissioner Strauss asked how the increase in business to Downtown restaurants would be measured during the proposed events. He recalled that a comment had been made that there had not been a significant financial benefit to the restaurants from Friday night music events prior to the pandemic. He also felt the restaurants should be asked to contribute toward funding the events.

Mayor Vincent suggested that there may also be an opportunity for the Town to benefit from increased parking revenue generated by the proposed events. He continued that the amount of revenue generated by the events was not a concern for him, as the businesses will communicate to the Commission whether or not the events are successful for them. He also noted that the Town will cover the costs of the event in the beginning, with the possibility of cost-sharing by the businesses at a later time.

Vice Mayor Malkoon asked why the Pavilion would not be used for Friday night events. Special Events and Marketing Manager Hime explained that there is not sufficient electricity in the Pavilion to power the event. Deputy Town Manager/Public Works Director Rubach added that lighting the Pavilion would also create conflict during turtle season.

Commissioner Pouloupoulos commented that the Town should request feedback from residents as well as businesses to ensure the events are successful for all parties. He

**Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023**

emphasized the importance of making sure residents are happy with bringing back these events, particularly as they will be funded by Town dollars.

Town Manager Connors concluded that Staff's proposal is to use auction money to fund the Friday night music events in the current fiscal year. By the time the Town is preparing the fiscal year (FY) 2023-2024 budget, they will know whether or not the events were a success as well as whether or not sponsors are available. The Commission would be asked to decide where these events fall within their budget priorities for the next year.

Motion made by Commissioner Poulopoulos, seconded by Vice Mayor Malkoon, to fund Friday night music events in February, March, April, and May 2023 as a pilot program, with the condition that the Town will actively seek sponsorships for the first four events.

Special Events and Marketing Manager Hime advised that there may not be sufficient time to secure sponsors in advance of all four events, but she would work toward this goal as the pilot program continues.

Motion carried 5-0.

b. Resolution 2023-03 – A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR THE BROWARD COUNTY SEGMENT II SHORE PROTECTION PROJECT; PROVIDING FOR EXECUTION, IMPLEMENTATION, AND FOR AN EFFECTIVE DATE

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Deputy Town Manager/Public Works Director Rubach recalled that in 2015, Broward County passed an interlocal agreement for this project. The Town Commission approved the agreement, although there are currently no copies of it. The funds for this program have been a line item in the Town's budget for several years. The Town Attorney and the Broward County Attorney have reworked the agreement, with its payment terms remaining the same. The first payment will be due in 2023, with payments to follow in 2024 and 2025 for a total not to exceed \$350,000. Should the

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

County secure additional money from the federal government, there may be an additional \$147,540.

Commissioner Oldaker made a motion, seconded by Commissioner Strauss, to approve. Motion carried 5-0.

14. COMMISSIONER COMMENTS

Commissioner Pouloupoulos thanked Town Staff, the Volunteer Fire Department, and all other participants in the recent Epiphany ceremony held Downtown. The event was a great success, with over 350 participants, including many visitors to the Town.

Commissioner Strauss thanked Special Events and Marketing Manager Hime for the Christmas-By-The-Sea recap presentation.

15. ORDINANCES 1ST READING

None.

16. ORDINANCES 2ND READING

None.

17. RESOLUTIONS – PUBLIC COMMENTS

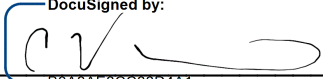
None.

18. QUASI JUDICIAL PUBLIC HEARINGS

None.

19. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 7:50 p.m.

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Mayor Chris Vincent

Lauderdale-By-The-Sea
Regular Town Commission Meeting
January 10, 2023

ATTEST:

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Town Clerk

3/21/2023

Date



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
WORKSHOP MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, June 27, 2023
5:30 PM**

1. CALL TO ORDER

Mayor Chris Vincent called the meeting to order at 5:30 p.m. Also present were Vice Mayor Edmund Malkoon, Commissioner Alfred “Buz” Oldaker, Commissioner Theo Pouloupoulos, Commissioner Randy Strauss, Town Manager Linda Connors, Town Attorney Susan Trevarthen, Deputy Town Manager/Public Works Director Ken Rubach, Assistant to the Town Manager Courtney Easley, Director of Budget and Finance Lucila Lang, Development Services Director Jhanelle Campbell, Special Events and Marketing Coordinator Katie Anderson, and Town Clerk Katrina Adler.

2. PUBLIC COMMENT

At this time Mayor Vincent opened public comment.

Steve D’Oliveira, resident, advised that the *Sea Shorts* play festival is presented twice a year at the Community Center. He requested additional funding for this program in fiscal year (FY) 2023-2024, as they hope to present a third show. The program is successful and involves a number of the Town’s senior citizens as participants. *Sea Shorts* is presented free of charge to the community.

Brenda Ulbach, resident, explained that she operates the theater arts program at the Community Center. The *Sea Shorts* plays are submitted by local playwrights. She hoped to expand the program by adding performances of a published play, which requires payment for performance rights. This cost is \$125 per performance, and six performances are proposed. She and Mr. D’Oliveira are requesting \$1000, which would pay for the performance rights and provide another \$250 for construction of a set. The intent is to be able to present the play with no admission fee.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

3. DISCUSSION ITEM

Lauderdale-By-The-Sea
 Town Commission Workshop
 June 27, 2023

- **FY 2023-2024 Budget Presentation**

Town Manager Linda Connors recalled that at the May 23, 2023 workshop meeting, Staff explained the budget process and spoke with the Commission regarding the standard costs required to retain the Town's level of service in FY 2023-2024. They also discussed proposed enhancements in several Departments, and requested feedback from the Commission as well.

Tonight's meeting will address a list of proposed budget enhancements, which has been provided to the Town Commission for discussion and any potential changes. Staff asks that the Commission prioritize these enhancements.

County figures on the Town's assessed property values are expected to be provided the following week, which will give Staff a better idea of the funding available in FY 2023-2024. With this information, they will be able to inform the Commission of where the Town stands on the proposed enhancements, based on the current millage rate. This will be presented to the Commission in July 2023, along with how the rolled-back millage rate, the current millage rate, or a different millage rate would affect the funding of enhancements.

Town Manager Connors presented the following proposed enhancements:

- Open House event for Town businesses at the Visitors Center
- Administrative costs related to the 2024 Commission election
- Review and update of the Town's Strategic Plan
- Commission ethics training
- Staggered computer upgrades
- Lobbying costs
- Printing and mailing of *Town Topics*
- Tourism and community development expenses, including additional special events
- Dive Into Summer (rebranding of Bugfest)
- Friday Night Music, twice per month for five months
- Kids-By-The-Sea
- Movies-At-The-Park
- The Town's 75th anniversary celebration
- Yoga-By-The-Sea
- Broward Sheriff's Office (BSO) enhanced patrol

Lauderdale-By-The-Sea
Town Commission Workshop
June 27, 2023

- Addition of a Nuisance Abatement Program for the Development Services Department
- Multi-hazard mitigation plan
- Florida-friendly landscaping
- Mid-century Modern (MIMO) architecture scavenger hunt
- Additional bathroom cleaning and enhanced pressure cleaning
- Renovation of Downtown bathrooms
- Increase to the Town's Emergency Fund

Town Manager Connors requested Commission feedback regarding the removal of any of the proposed enhancements from consideration for next year's budget.

Vice Mayor Malkoon recalled that the Friday Night Music events returned this year with little advance notice, and that the Town is seeking sponsorships for the events in order to defray costs. He also suggested that it may be more cost-effective to lease computer equipment rather than purchase it.

Town Manager Connors explained that when funds are budgeted for an event such as Friday Night Music, they cannot anticipate fundraising as part of the budget. The Town must budget for the full cost of the event, with revenue to be added from another source.

Vice Mayor Malkoon briefly addressed the Emergency Fund, recalling that this line item can apply to any type of emergency. He asked how the proposed additional \$500,000 for this Fund was determined, as well as for standard calculations such as the cost of salaries, up-front costs for which the Town would be reimbursed at a later date, and other forms of payment. He felt it would be better to understand the Town's plans for emergency events before making a decision on this addition.

Deputy Town Manager/Public Works Director Ken Rubach explained that he has reached out to municipalities affected by hurricanes in the 2022 season. He cited the example of Fort Myers Beach, which used \$3.5 million from its Emergency Fund in less than one month.

Deputy Town Manager/Public Works Director Rubach continued that many county and municipal administrators experienced difficulty with assessors after the fact. When taxes were frozen, expenses had to come from emergency funds and reserves. He concluded that the intent of this item is to consider how much money the Town has in its reserves and ensure that the Commission is comfortable with that number.

Lauderdale-By-The-Sea
Town Commission Workshop
June 27, 2023

Vice Mayor Malkoon asked if Broward County has held similar discussions regarding what other municipalities and counties may do. Deputy Town Manager/Public Works Director Rubach advised that these have only been casual conversations, although the numbers can be clarified.

Vice Mayor Malkoon also asked if there are other forms of emergency funding the Town should consider, such as an open line of credit for emergency use only. Deputy Town Manager/Public Works Director Rubach advised that Staff is looking into new banking in autumn 2023 and will consider lines of credit and other emergency options in this forthcoming request for proposal (RFP).

Commissioner Pouloupoulos requested clarification of how emergency dollars are earmarked for other uses aside from storms. Deputy Town Manager/Public Works Director Rubach replied that the Emergency Fund is considered a “rainy day fund,” which could also apply to emergencies such as a pandemic. If the Town’s tax base is affected by an emergency, the Emergency Fund would provide an income source to pay the Town’s bills, vendors, and Staff.

Town Manager Connors added that the Emergency Fund could also be used in the event of cost increases, or payment for events that were not foreseen in the budget. The existing Contingency Fund of \$100,000 would not be sufficient for these purposes. It was also noted that the Emergency Fund is kept separate from the Town’s revenue sources and would not normally be used for day-to-day operations. Staff would need to come before the Commission and request authorization for the Town Manager to expend monies from the Emergency Fund.

Commissioner Pouloupoulos requested additional information regarding enhanced pressure cleaning. Deputy Town Manager/Public Works Director Rubach advised that the ongoing Downtown project will include new pavers to replace old ones. The current pavers are cleaned twice weekly; however, Staff proposes expanding this to four times per week to keep the new pavers in the best possible condition. He acknowledged that this may be a significant increase, and would work with the vendors who respond to an RFP for this service in order to determine the best price possible.

Commissioner Pouloupoulos asked if the increased schedule would make a significant difference. Deputy Town Manager/Public Works Director Rubach replied that the Town hopes a more aggressive schedule for cleaning the new pavers may be more effective

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than trying to clean materials after they have degraded over time. This would be a cost that would continue into the foreseeable future as ongoing maintenance.

Commissioner Strauss addressed a line item which cited funding for traffic calming measures, stating that he is concerned with traffic in the Silver Shores neighborhood which moves through West Tradewinds Avenue past Benihana's restaurant. There have been discussions of a possible traffic study, followed by potential traffic calming or controlling measures. He asked if that neighborhood is included in the traffic calming line item.

Town Manager Connors clarified that a discussion of traffic and possible calming measures in the Silver Shores community would fall under the City's Capital Improvement Plan (CIP). This item will be discussed further at the next meeting.

Commissioner Strauss also asked if part of the \$200,000 for enhanced pressure cleaning would be offset by the Downtown businesses' cleaning responsibilities. Deputy Town Manager/Public Works Director Rubach confirmed that this is being considered for inclusion in sidewalk café fees to bring down the Town's costs.

Commissioner Strauss noted that Friday Night Music events have been a success, and recalled that before these events were brought back, he had suggested that the Downtown businesses which benefit from them should contribute some funds toward the events. He requested that the Commission see metrics identifying whether or not these businesses experienced a financial benefit from Friday Night Music, and would like to see them provide some type of contribution toward the events' costs.

Commissioner Strauss requested additional information on the nuisance abatement program suggested for the Development Services Department. Development Services Director Jhanelle Campbell explained that this program would address properties with Code issues that are not being remedied as expected by the property owners. The nuisance abatement program would require an Ordinance Amendment and would allow Staff to remedy the issues. A lien would then be placed on the property for the cost of the abatement.

Town Manager Connors cited recent examples of properties that were not being maintained responsively, which led the Town to assume the responsibility of paying for the issues to be addressed. While those costs were relatively small, other Code infractions can grow out of control and take up a significant amount of the Town's budget.

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Development Services Director Campbell added that the entire amount of the proposed nuisance abatement line item might not be used in the next budget year; however, the amount would be available if major issues arise.

Commissioner Oldaker recalled that he had introduced the issue of the Emergency Fund, pointing out that this fund would cover any up-front expenses associated with storms for which the Federal Emergency Management Agency (FEMA) would reimburse the Town. Deputy Town Manager/Public Works Director Rubach confirmed that many of the communities he had spoken with had cited this potential need.

Commissioner Oldaker continued that he felt *Town Topics* is becoming obsolete due to modern technology, noting that the Town communicates with residents through email blasts and other messaging. He suggested that some copies could be printed and made available at Town Hall, the Visitors Center, or other interested businesses or locations.

Commissioner Oldaker also requested additional information about enhanced BSO patrols. Town Manager Connors explained that the Town has an additional contract with BSO for \$80,000 each year. No increase to this contract is recommended in FY 2023-2024. This contract allows for a greater Police presence in the Downtown areas during events such as spring break.

BSO Captain Tom Palmer stated that enhanced visibility is a separate contract that applies during peak season, which lasts from November through Easter. It provides for a dedicated Deputy in the Downtown area on Thursday, Friday, Saturday, and Sunday evenings. This began during the COVID-19 pandemic and has proven its success since that time, and is well-received by the public and businesses. This program is for the Downtown area alone.

Mayor Vincent addressed the proposed \$500,000 increase to the Emergency Fund, stating that while it is important to maintain ample reserves, it is a hypothetical expense. He recalled that during his tenure on the Town Commission, the Town has not yet used any reserve funds. He felt the increase would place a burden on the taxpayers and the budget and would lessen the opportunity to use those funds for other improvements.

With regard to enhanced pressure cleaning, Mayor Vincent continued that he has discussed this issue with the Town Manager and Deputy Town Manager/Public Works Director. He estimated the revenue from sidewalk cafés at approximately \$80,000, while

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current pressure cleaning costs are \$250,000. With the Downtown improvements, however, the pressure cleaning budget could increase to \$450,000 or more.

Mayor Vincent pointed out that the cost of increased pressure cleaning of new pavers could exceed the overall budget of the Downtown improvements. While he felt this cleaning was important, this expense could come to nearly \$3 million over the next five years, which was unsustainable. He emphasized the need to look closely at this line item going forward and possibly consider alternatives.

Regarding nuisance abatement, Mayor Vincent advised that he remained undecided on this proposed \$30,000 line item. He noted that these issues are already monitored by Staff, and there are not a great many significant Code issues that would be addressed by the program.

Development Services Director Campbell explained that the intent of the proposed nuisance abatement program would be to ensure the community does not have to live with property issues for an extended period of time. Mayor Vincent reiterated that he felt the Town has sufficient funds to address these needs as they arise.

Mayor Vincent continued that it is important to encourage all Downtown businesses to participate in the Friday Night Music program, noting that if not all businesses put money toward these events, they cannot be required to do so. He felt the proposal to have these businesses provide some funds was a good idea, but was not certain that it could be enforced.

Town Attorney Susan Trevarthen advised that this would depend on how the program is structured. If the Town wished to explore the possibility of charging businesses a mandatory fee for participation in the program, this could be done through mechanisms such as business improvement districts.

Mayor Vincent continued that he felt the Town could defer the proposed \$35,000 computer update until the next year's budget, as there are currently no issues with this equipment. He added that the enhanced patrols by BSO were an "open-ticket" item: if the Town wishes to use this contract, it is billed separately. With respect to traffic calming, he requested that Captain Palmer bring forward any specific locations on which he had concerns for additional discussion.

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Town Manager Connors asked if the list might be prioritized, with some items to be eliminated. It was determined that the proposal for enhanced pressure cleaning be lessened by one day, which would reduce this line item to \$100,000.

Commissioner Pouloupoulos also suggested cutting the line item amount in half for the Friday Night Music events. Town Manager Connors noted that this would mean five events instead of ten. Mayor Vincent recommended that the next time this item is discussed, there should be clarification of how much parking revenue is brought in on the Friday nights on which the events are held in comparison to regular Friday night parking revenues both in and out of season. He felt the calculation of additional revenues would be helpful in deciding whether or not to retain this line item.

Commissioner Pouloupoulos continued that he would not be comfortable increasing Friday Night Music costs without allocating funds toward the Emergency Fund as a balance.

Commissioner Strauss advised that he would approve halving the Friday Night Music costs, with the opportunity for additional Friday Night Music events up to twice per month supported by token contributions from Downtown businesses. The Town would still provide the majority of this payment. The amount of the contribution from businesses would need to be determined. He was also in favor of using parking revenue as a measure of the events' success, as suggested by Mayor Vincent.

Commissioner Strauss also requested clarification of how much is currently in the Emergency Fund. Mayor Vincent replied that this is \$2.5 million. The proposed addition would bring this to \$3 million.

Mayor Vincent agreed with reducing the Friday Night Music events line item from ten events back to five, with additional information forthcoming on revenue streams or business contributions toward these events.

Town Manager Connors asked if the Commission wished to retain line items for other events, including Dive Into Summer, Kids-By-The-Sea, Movies-at-the-Park, the 75th anniversary celebration, Dancing-By-The-Sea, and Yoga-By-The-Sea.

Vice Mayor Malkoon noted that the 75th anniversary event will re-brand many of the existing events throughout the year. He requested clarification of the Kids-By-The-Sea event. Town Manager Connors replied that this would be a new "kickoff to summer" event with activities such as a sandcastle contest.

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Vice Mayor Malkoon also suggested that in addition to using a portion of sidewalk café revenue toward enhanced cleaning, a small amount might also be set aside for events and entertainment in the Downtown area. Town Manager Connors noted that the sidewalk café fees have not been increased in many years, and have in fact been reduced on the western side of the Town. Vice Mayor Malkoon felt this could be a way to provide for equitable participation.

Mayor Vincent advised that he was not certain he wished to proceed with the proposed Kids-By-The-Sea event in FY 2023-2024, as the 75th anniversary celebration will already include additional events. He also recommended deleting Movies-at-the-Park and retaining Dancing-By-The-Sea and Yoga-By-The-Sea.

Mayor Vincent recommended retention of the Florida-friendly landscaping line item and deleting the MIMO scavenger hunt. He was in favor of proceeding with a new Strategic Plan.

Commissioner Pouloupoulos agreed with deletion of Kids-By-The-Sea, but felt the Town should retain Movies at the Park, which has been successful in other communities at a relatively low price. He also recommended deletion of the scavenger hunt and retaining Dancing- and Yoga-By-The-Sea.

Commissioner Pouloupoulos noted that the bathrooms in need of renovation are relatively new. Deputy Town Manager/Public Works Director Rubach explained that vandalism is an ongoing concern, but noted that upgrading the fixtures to commercial grade has helped address this issue.

Commissioner Oldaker stated that he was still in favor of the proposed \$500,000 addition to the Town's Emergency Fund, and was in agreement with the other Commissioners on the other items reviewed thus far.

The Mayor and Commissioners accepted the following proposed enhancements by consensus:

- Visitors Center Open House for businesses
- Strategic Plan
- Ethics training through the Town Attorney's Office
- Lobbyists
- Dive Into Summer
- Movies at the Park

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- 75th anniversary celebration
- Dancing-By-The-Sea
- Yoga-By-The-Sea
- Enhanced BSO patrol
- Multi-hazard mitigation grant
- Florida-friendly landscaping education and outreach
- MIMO scavenger hunt
- Additional Downtown bathroom cleaning
- Beach bathroom renovation

The Mayor and Commissioners accepted the following enhancements by consensus, with the noted changes:

- Friday Night Music: reduced to five times per year at a reduced cost of \$50,000, with parking revenue information to come and with the consideration of asking Downtown businesses to participate in cost sharing
- Enhanced pressure cleaning: reduce this line item from \$200,000 to \$100,000

The Mayor and Commissioners agreed by consensus to delete the following enhancements:

- Computer updates
- Printing and mailing of *Town Topics*
- Kids-By-The-Sea
- Nuisance abatement

The Commissioners again addressed the potential increase of the Emergency Fund, with Vice Mayor Malkoon stating that he would like more information before making this decision. Commissioners Oldaker and Pouloupoulos advised they were willing to increase this Fund by \$250,000 in FY 2023-2024 and another \$250,000 in FY 2024-2025. Mayor Vincent and Commissioner Strauss were not in favor of any increase.

Vice Mayor Malkoon suggested that he would like to hear other options, as well as data on possible alternative means of emergency funding, such as a credit line. He also requested more specific information on how many months' worth of salaries and expenses might be required from the Emergency Fund. Town Manager Connors suggested that Staff could bring back information on what is done by other communities, including the Emergency Fund's percentage of their budgets.

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Mayor Vincent asserted that he was not in favor of the proposed increase, as it would constitute 40% of the Town's entire budget. He suggested that he would consider spreading out increases over a number of years, such as \$100,000 or \$75,000 per year over a four- to five-year period.

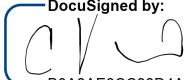
Commissioner Pouloupoulos asked when the Town last made a contribution to its Emergency Fund. Town Manager Connors replied that the Town does not make contributions to this fund. It was clarified that the fund may have last been increased in 2016. Commissioner Pouloupoulos concluded that he felt a \$250,000 increase would be sufficient.

It was determined that Staff would bring back additional information related to the proposed increase to the Emergency Fund.

Town Manager Connors also requested that the Commissioners consider where they would prioritize the items they wished to include in the budget. This would be discussed briefly at the next Commission meeting.

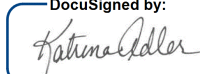
4. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 6:50 p.m.

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Mayor Chris Vincent

ATTEST:

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Town Clerk

7/26/2023 | 11:26 AM PDT

Date



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, September 26, 2023
6:30 PM**

1. CALL TO ORDER, MAYOR CHRIS VINCENT

Mayor Chris Vincent called the meeting to order at 6:30 p.m. Also present were Vice Mayor Edmund Malkoon, Commissioner Alfred “Buz” Oldaker, Commissioner Theo Pouloupoulos, Commissioner Randy Strauss, Town Manager Linda Connors, Town Attorney Susan Trevarthen, Deputy Town Manager/Public Works Director Ken Rubach, Assistant to the Town Manager Courtney Easley, Development Services Director Jhanelle Campbell, Director of Budget and Finance Lucila Lang, Assistant Finance Director Edner Saint-Jean, Senior Special Events and Marketing Coordinator Katie Anderson, and Town Clerk Katrina Adler.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

All present observed a moment of silence.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

None.

5. PRESENTATIONS

a. Recognition by FCCMA for Lauderdale-By-The-Sea’s council-manager form of government for 35 years.

Sarah Hannah-Spurlock, representing the Florida City and County Management Association (FCCMA), explained that this organization is a nonprofit corporation comprised of 626 practicing public administrators in various local governments across Florida. Their primary mission is to enhance professionalism and advocate for the council-manager form of government as a system upholding the highest ethical and professional standards.

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Ms. Hannah-Spurlock presented the Town with a certificate commemorating their 35th year as a council-manager form of government, as recognized by the International City/County Management Association.

6. PUBLIC COMMENTS

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

7. PUBLIC SAFETY DISCUSSION

Mayor Vincent read a Proclamation recognizing October 2023 as Fire Prevention Month in Lauderdale-By-The-Sea. Fire Marshal Pete McGinness advised that the Pompano Beach Fire Department will hold an Open House event prior to the October 17, 2023 Town Commission meeting.

a. BSO August 2023 Public Safety Report

Broward Sheriff's Office (BSO) Captain Tom Palmer reported that Detective Ben Koos is the Deputy of the Month, citing the Detective's work on a fraud case in coordination with the Tampa Police Department and Florida Highway Patrol.

Captain Palmer continued that BSO holds an annual awards ceremony to recognize exemplary acts by its employees. This year, the Alpha Green (midnight) shift was recognized for the work they did near the end of calendar year 2022, including two burglaries and two missing persons recoveries.

Commissioner Oldaker made a motion, seconded by Commissioner Poulopoulos, to approve. Motion carried 5-0.

8. TOWN MANAGER REPORT

a. Town Manager Report

Town Manager Linda Connors stated that the Sea Shorts Players have requested free parking during their rehearsals and performances, as well as blocking off parking in the Town Hall parking lot for patrons during performances. These requests are consistent with previous Commission action. Sea Shorts will be held on October 13-15 and 20-22, 2023. The Commission agreed by consensus to grant the parking requests.

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Town Manager Connors continued that sidewalk café fees for restaurants will be due with the new fiscal year beginning October 1, 2023. The Downtown area remains under construction and is ahead of schedule. Construction is expected to be complete by mid-November. Because sidewalk cafés cannot operate during construction, they will not be charged for that time period. The Town Manager suggested giving affected sidewalk cafés relief for the first full quarter of fiscal year (FY) 2023-2024, which runs from October through December.

Ann Marchetti, resident, thanked the Commission for what they have done on behalf of the Downtown businesses, and requested that they consider waiving the sidewalk café fees for the next full year due to the impact of construction. She estimated that the businesses have seen a 30% to 45% loss in sales since construction began. She also suggested that the Commission determine how Commercial Boulevard can be at least partially reopened, and requested additional signage as well as Code relaxation so businesses can hang banners. She concluded that the Town may wish to consider “mini-grants” that can be awarded to the businesses, using dollars from COVID-19 pandemic relief and/or ad valorem revenues.

Town Manager Connors requested Commission direction on the proposed waiver as well as whether it would apply to one, two, three, or four quarters of the coming fiscal year.

Commissioner Strauss observed that he was in favor of waiving sidewalk café fees for the first quarter of FY 2023-2024, with Staff to bring back additional information on what further waivers would mean financially at the next Commission meeting. He pointed out that this request could also be considered by the Commission on a quarter-by-quarter basis.

Commissioner Pouloupoulos also recommended that the Commission consider the request on a quarter-by-quarter basis. He requested clarification that the waiver would only apply to restaurants east of Commercial Boulevard. Town Manager Connors explained that her suggestion would be to apply the waiver to all restaurants in the Commercial Boulevard area east of A1A.

Vice Mayor Malkoon concurred with waiving the fee during the first quarter of FY 2023-2024, with the option of approving additional quarters later on. He noted that the Town deliberately undertook the Downtown project during the slower season in order to have

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a lesser impact on businesses. He added that he was not certain Commercial Boulevard can be reopened at this time.

Deputy Town Manager/Public Works Director Ken Rubach advised that Town Staff will consult with the Florida Department of Transportation (FDOT) regarding when Commercial Boulevard can be reopened. He pointed out that this is the main staging area for the Downtown project, and concluded that while it will be reopened as soon as possible, the Town cannot open the roadway too soon while safety remains a concern.

Mayor Vincent also acknowledged that FDOT maintains authority over the roadway and reiterated that the project remains ahead of schedule. Town Manager Connors added that the Town had chosen this season for the project because holidays such as Mother's Day and the Fourth of July would be over before the project began.

Commissioner Oldaker also agreed with waiving fees for the first quarter of FY 2023-2024 as well as addressing subsequent periods on a quarter-by-quarter basis. He also agreed that Staff should bring back an analysis of the financial aspects of further waivers so the Commission can make an informed decision.

Commissioner Oldaker also addressed the Fort Lauderdale International Boat Show, suggesting that attendees of that annual event could be brought into the Town via Circuit. He noted that this may require further meetings of Town Staff and businesses to consider ideas to attract attendees to Lauderdale-By-The-Sea.

There was Commission consensus on waiving the first quarter sidewalk café fees for affected restaurants, with Staff to bring back an Agenda Item in December 2023 to discuss the next quarter for businesses east of A1A.

Town Manager Connors continued that BSO is participating in the national "Coffee with a Cop" event on October 4, 2023. She encouraged the public to visit the Village Grille on that day from 8 a.m. to 10 a.m. and meet the Town's Deputies.

Legislation was passed the previous year which allowed the Town to stop printing advertisements for public meetings in the *Sun-Sentinel* or other local print newspapers. The cost of this requirement ranged from \$40 to \$800 per advertisement. The Town now posts notices on its website, as well as on a link on Broward County's website.

On September 15, 2023, State Senator Jason Pizzo invited all the municipalities he represents to meet and discuss resiliency and emergency operations in those areas.

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The Senate Majority Leader and Director of Florida's Department of Emergency Management were also present. The Town was able to sign up for new initiatives that allow them access to 20% of Category A and B funding following a disaster.

90% of the concrete work for planters and curbs in the southern block of the Downtown project has been completed, and 50% of the same work has been completed on the northern block. Trees will be replaced at Dune Plaza once the pavers have been installed. The project is expected to be substantially complete in mid-November.

Commissioner Oldaker noted that the Town's second Commission meeting in October has been rescheduled to October 17, 2023.

Mayor Vincent commented that he and Town Manager Connors have met with Senator Pizzo a second time to discuss potential grants as well as home rule and pending legislation. Some of the issues raised with the Senator included insurance, regulation of vacation rentals, the condition and protection of condominium buildings, and the impact of the recent Live Local Act on the Town. They also discussed the Town's public safety facilities and potential funding for a new public safety building.

9. TOWN ATTORNEY REPORT

Town Attorney Susan Trevarthen addressed the Town's new voting system, explaining that the Commission's Meeting Procedures Resolution specifies how voting will occur. Any Commissioner may demand clarification of the positive and negative votes when a voice vote is taken, and the Mayor casts the final vote. She concluded that Staff will continue to work with the new system and can modify the Resolution at any time.

10. APPROVAL OF MINUTES

None.

11. CONSENT AGENDA

a. Hardship Parking Permit Applications

b. Resolution 2023-57: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A WORK AUTHORIZATION WITH BAXTER & WOODMAN, INC. FOR THE SOUTH SILVER SHORES TRAFFIC CALMING STUDY; AUTHORIZING

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**THE TOWN MANAGER TO EXECUTE THE WORK AUTHORIZATION;
AND PROVIDING FOR AN EFFECTIVE DATE.**

Ken Brenner, resident, requested clarification of why the Town's contract was granted to Baxter and Woodman, Inc. without first going out for bid. He expressed concern that South Silver Shores residents will be able to provide proper input on the traffic calming study.

Deputy Town Manager/Public Works Director Rubach explained that the Town's procurement policy as stated in its purchasing manual allows for previously bid professional services to be used. The Town has a list of these services in which Baxter Woodman is included along with other firms that serve the Town. Baxter Woodman will also attend the upcoming meeting with South Silver Shores residents to hear their ideas. No work will be done prior to that meeting.

c. Lauderdale-By-The-Sea Garden Club request for Jarvis Hall Use and Parking Permits in Fiscal Year 24

d. Lauderdale-By-The-Sea Woman's Club request for Jarvis Hall Use and Parking Permits Request for FY24

Vice Mayor Malkoon made a motion, seconded by Commissioner Oldaker, to approve Consent Agenda Items a, b, c, and d. Motion carried 5-0.

12. OLD BUSINESS

None.

13. NEW BUSINESS

a. Resolution 2023-59: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, ADOPTING POLICIES AND PROCEDURES FOR NAMING OF TOWN-OWNED PROPERTIES AND FACILITIES; PROVIDING FOR EXECUTION, IMPLEMENTATION, CONFLICTS, AND AN EFFECTIVE DATE.

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

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Assistant to the Town Manager Courtney Easley stated that this Item proposes policies and procedures for the naming of Town-owned properties and facilities. An individual recommended for the naming of a facility or property should exhibit a significant local or national contribution to the Town and should have a documented history of achievement in private, public, or military service.

The proposed policy does not include the naming of streets, as this would require additional approvals from other state and local entities, as well as additional mailing requirements.

Staff recommends not naming any non-permanent amenities, such as park benches, trees, or any items that could be moved over time. Another consideration would be to limit naming to individuals who are not in public office at the time the naming request is made.

Naming opportunities will be initiated by a Commissioner. A group of residents or an organization may reach out to a Commissioner for consideration; upon approval and direction from the Commissioner, Staff would then compile information and present it as an agenda item. The Commission will determine whether the Town or the proposing organization will incur costs associated with the request. Staff recommends approval of the proposed policy.

Commissioner Strauss felt the policy's criteria were sound, but noted that there may be instances in which an individual for whom naming of a facility is proposed may not meet 100% of these criteria. He felt the Commission would be capable of "balancing the criteria" in these cases.

Mayor Vincent requested clarification that the policy permits open interpretation in the future. Assistant to the Town Manager Easley confirmed this and advised that the policy may also be amended if the Commission wishes.

Commissioner Strauss made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

**b. Application for Relief of Code Compliance Liens at 230 Pine Avenue,
Lauderdale-By-The-Sea, FL 33062**

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Development Services Director Jhanelle Campbell stated that Staff received this mitigation application on August 30, 2023. The subject property has been cited for several Code Compliance issues, including:

- Work without a permit
- Tree removal without a permit
- Exterior maintenance issues
- Building disrepair

These issues, and the fines associated with them, are outlined in greater detail in the Staff Report. The property is considered one of the top three nuisance properties in the Town, and the Town has spent \$2000 to abate Code issues, including overgrown grass, garbage/junk removal, and securing the property due to a compromised garage door. The Commission previously granted Town Staff permission to pursue foreclosure on the property due to the nature and gravity of its Code Compliance violations.

Development Services Director Campbell also noted that the property has been cited five additional times for various violations, four of which resulted in liens recorded against the property. These violations ranged from property maintenance in 2017 and 2022, overgrown vegetation, garbage and litter, and a bee infestation. All five of these violations were ultimately complied with, and a total of \$20,600 in associated liens has been paid. The Applicant has also paid \$850 in administrative costs, \$752.41 for a demolition permit and erection of a construction fence, as well as the required \$500 mitigation application fee.

The remaining three violations before the Commission have a total amount due of \$323,500. These violations are reflected in the Staff Report. The property owner is requesting an 88% reduction, offering a settlement of \$40,000 for the three remaining liens. All three of the violations have been brought into compliance.

Staff recommends that the Commission hear from the Applicant's representative and determine the appropriate mitigation amount. The Applicant is asked to present evidence of the sale of the property and provide full payment of the mitigated amount by October 26, 2023. Staff also recommends that conveyance of the property to the new owner be complete by that date as one term of the mitigation agreement. Failure to meet the terms of the mitigation agreement would result in the filing of a new Code Compliance case. The existing liens would not be released unless the actions recommended by the Commission are completed. If a new Code Compliance case must be filed against the owner, new fines could be assessed if the violations are not brought into compliance.

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Nicholas Rieck, Applicant, explained that in 2021, he entered into a partnership “on paper” with an individual who was acting on behalf of her son, who owns several assets in South Florida. It soon became apparent that the individual’s son did not intend to operate within the partnership as planned. Loans were taken out against the properties, and Mr. Rieck did not have control of funds as the property began to accrue significant fines for Code violations.

Mr. Rieck continued that the partner regularly allows distressed properties to go into foreclosure. Since Mr. Rieck has taken control of the property, it has been brought into compliance, \$20,600 has been paid in fines, and permits have been obtained after the fact. He has secured a prospective buyer who is waiting until after tonight’s lien mitigation hearing to close on the property.

Mr. Rieck concluded that he is in regular contact with the prospective buyer. His only other option is to allow the property to go into foreclosure. He offered to provide additional documentation of his claims if that is the Commission’s wish.

Eileen Suarez, appearing with the Applicant, stated that beginning earlier in 2023, the partner Mr. Rieck had named hired her to “run interference with” the Town and find out what was required to bring the property into compliance. She has worked to address the bee issue and has dealt with a fine associated with removal of a tree limb by a neighbor. She was unable to attend a Special Magistrate meeting related to these issues.

Ms. Suarez felt the property would generate significantly more funds for the Town once it has been sold, which would not be the case if Mr. Rieck had to pay the full amount of the fines. She requested consideration of the Applicant’s position by the Commission.

Mayor Vincent noted the hardship the subject property has caused to its neighbors over time, as well as the Applicant’s response to the Town. Ms. Suarez asserted that the partner’s employees’ hands were tied until the Applicant took over the property.

Commissioner Oldaker recalled that the property in question has been discussed over a long period of time by the Commission, and asked if Staff can confirm the Applicant’s story. Development Services Director Campbell replied that since she has interacted with the Applicant and Ms. Suarez, the process of bringing the property into compliance has been significantly smoother.

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Commissioner Pouloupoulos asked if the title for the property was transferred from the partner to the Applicant, or if it remains under the partner's corporate name. Ms. Suarez replied that the property is still under the corporate name, for which she holds power of attorney. She advised that while the title remains with the partner's company, the company's attorneys have agreed that the Applicant will take control of the property "to deal with what's going on."

Commissioner Pouloupoulos asked if Ms. Suarez had exclusive power of attorney to sell the property. Ms. Suarez replied that exclusive power of attorney was granted to her by the corporation to deal with the property. While she had not included sale of the property in her contract with the company, she assumed that she has control over the property.

Commissioner Pouloupoulos explained that he wanted to ensure the Applicant has authority to sell the property. Ms. Suarez stated this was the case, adding that while she is working with the property's Code issues, she has no part in its sale.

Town Attorney Trevarthen advised that the Commission should have no involvement in reading the Applicant's corporate documents; furthermore, Staff has made their recommendation in a way that would not require the Commission to do so. The request is for an 89% reduction in fines, and Staff's recommendation includes conditions. If the conditions are not met, the property will come before the Commission again.

Commissioner Strauss explained that his concern had been that the Applicant's partner could potentially be able to keep any agreement from being made with the Applicant. With the Town Attorney's assessment of the situation, his concern was addressed. Town Attorney Trevarthen further clarified that by October 26, 2023, the sale of the property must be completed and the payment made.

Commissioner Strauss made a motion, seconded by Commissioner Oldaker, to proceed with the 89% reduction to \$40,000 with the terms suggested by Staff. Motion carried 5-0.

c. 2024 Friday Night Music Series

Peggy Mohler, business owner, stated that she was in favor of the Friday Night Music Series, but felt it needed to be fair. She did not want the event to be held at the Dunes Plaza, and requested roadway signage for Downtown businesses, particularly during the current Downtown construction. She cited hardships to these businesses, pointing

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out that blocking Commercial Boulevard would harm them further if no signage is provided. She concluded that the Town and its businesses should work together as a team.

Bill Ciani, resident, commented that the Friday Night Music Series has always been located at one end of the Town, and he felt it should be moved to the other end between the Taco Craft and Even Keel restaurants. This would give all Downtown restaurants the opportunity to benefit from the event. He was also in favor of providing signage for Downtown businesses.

Ken Brenner, resident, asked why the Town was sponsoring the Friday Night Music Series, pointing out that most municipalities do not become involved with private businesses. He recommended that the businesses affected by the event have input into its plan and concluded that he felt enough of the Town's time and money has been spent east of A1A.

Senior Special Events and Marketing Coordinator Katie Anderson introduced the 2024 Friday Night Music Series, noting that these concerts have become a community favorite event. During the previous year, the Town used extra funds from an auction to operate the Friday Night Music Series monthly from February through May. The Commission budgeted \$50,000 in the FY 2023-2024 budget to continue the events, which are estimated to cost roughly \$10,000 each. This covers stage rental, lighting, sound, a BSO presence, signage, and more.

The Town proposes five Friday night concert events in 2024, which will run from 6 p.m. to 10 p.m. Proposed road closure and stage setup will begin at approximately 1 p.m. The proposed 2024 dates are as follows:

- January 19
- February 16
- March 22
- April 19
- May 17

Staff has reviewed the calendars of Pompano Beach and Fort Lauderdale and determined that the proposed dates do not conflict with currently published major events in those cities.

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While in the past, one band has played for the entirety of each event, Town Staff recommends the option of an opening band followed by a main act if the budget and entertainment schedules permit.

In previous years, the music events have been set up on El Mar Drive between the Village Grille and 101 Ocean restaurants. Discussions on shifting this event site arose during Staff recap meetings for the 2023 Series, where public safety and attendee comfort were discussed. Staff supported the proposed stage relocation with these needs in mind. They have reviewed location options with several Downtown businesses and received a request to present alternative locations for the Commission's consideration. These alternative locations were attached to the Staff Report.

Options A and B include a stage location on Commercial Boulevard, which would require the closure of Commercial Boulevard between Ocean Drive and El Mar Drive from 1 p.m. through the end of the event. This location does not require any parking space closures, eliminates issues with the route for Aruba Beach Café's valet parking, and provides more pedestrian space and eliminates congestion between the back of the stage and barricades. The proposed change in location would also allow El Mar Drive to remain open throughout the day and evening. Estimated public safety costs are within the budget established for each event.

Another alternative would be placement of the stage by the plaza, which would require closure of the drive accessing Anglin's Pier and Aruba Beach Café from 3 p.m. through the end of the event and its breakdown. This alternative would not require parking space closures with the exception of the horseshoe, and the stage would remain open. This option, however, would provide substantially less room for attendees, providing mostly standing room only. BSO would recommend an additional Deputy due to additional closures and relocation of valet parking if this alternative is used.

An additional location on El Mar Drive was also presented. This scenario would require the closure of the entirety of Commercial Boulevard from A1A to the beach, as well as the closure of El Mar Drive both east and west of its turnaround. No through traffic would be allowed Downtown from roughly 1 p.m. through breakdown of the event space. Parking spaces along El Mar Drive would be closed on both the east and west sides. Due to the requirement of additional closures, BSO would require eight Deputies as well a supervisor, which would substantially increase BSO costs. An additional fire safety detail would be required as well. Should this option be selected, the Town would need to reduce the number of series events.

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After reviewing the proposed options, Staff recommends options A and B, alternating placement of the stage between 101 Ocean/Harat's-By-The-Sea and Taco Craft/Even Keel. Once the 2024 Series has been approved and a site plan selected, Staff will move forward to secure bands for the events.

Vice Mayor Malkoon addressed option D, noting that this option mirrors the configuration used for Christmas-By-The-Sea from a road closure standpoint. The stage can be placed anywhere in the square.

Vice Mayor Malkoon asked Ms. Mohler if she had an issue with the closure of Commercial Boulevard. Ms. Mohler replied that her restaurant has lost significant revenue, and the closure of that roadway would further affect business. She asserted that no business owners were approached for input on the proposed event dates, and again requested signage for Downtown businesses.

Vice Mayor Malkoon asked if Staff had held conversations with any of the businesses that would be affected by the proposed events. Senior Special Events and Marketing Coordinator Anderson replied that she and the Town Manager spoke with a number of businesses to show them the proposed site plans and let them know that the proposed 2024 Friday Night Music Series would come before the Commission at tonight's meeting. Most of the responses indicated positive support.

Vice Mayor Malkoon commented that it might be preferable to seek sponsorships for these events so they would not be taxpayer-funded and suggested that some businesses might be willing to help the Town save some costs. He also recommended that permitting for the event be considered at the same time as sidewalk café permits, which would provide businesses a seat at the table for discussion of the event. He emphasized that the intent of the event is to help the Town's businesses.

Vice Mayor Malkoon concluded that the event should be held in a location to which most Downtown businesses have access.

Commissioner Strauss expressed concern with the dates proposed for the events. Town Manager Connors replied that Staff is seeking to maintain a standard time frame, such as the first or second weekend of each month. She added that each week may pose a different issue in scheduling, such as proximity to holidays. Commissioner Strauss recommended flexibility in the proposed dates. He concluded that he was in favor of options A and B and noted that if a selected location does not work out, it can be brought back to the Commission for a change.

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Commissioner Pouloupoulos advised that he was not a proponent of the Friday Night Music Series unless sponsorships are pursued, as he did not feel the Town's taxpayers should pay for the event. He also noted that the event helps some businesses more than others, and that the different staging options make a significant difference in which businesses benefit from the event.

Commissioner Pouloupoulos asked if there have been any major public safety-related incidents with the event stage on El Mar Drive. BSO Captain Tom Palmer replied that one concern from the previous year was the size and placement of the stage.

Commissioner Pouloupoulos continued that because Commercial Boulevard is the main artery to the Downtown area, limiting access on that roadway would be detrimental to those businesses. He recommended that the event remain on El Mar Drive, with changes to the staging as necessary.

Commissioner Oldaker stated that he felt the Downtown refurbishment project provided a perfect venue for the Friday Night Music Series, and pointed out that the events would only be scheduled one Friday night per month. He also felt options A and B were suitable and noted that changes could be made if the locations are not appropriate.

Commissioner Oldaker also addressed signage, suggesting that Staff work with Downtown businesses to determine the best alternate routes. He concluded that there are larger parking lots available on A1A in addition to valet parking or the lot on El Mar Drive. He also reminded all present that Circuit can provide transportation options for attendees who may not wish to drive.

Deputy Town Manager/Public Works Director Rubach explained that placing any signage on A1A would require permitting from FDOT unless the Town can partner with private properties.

Ms. Mohler reiterated that her sales are down significantly since construction began on the Downtown project, not including September. She has also had to lay off staff. She stated that the Town's signage is both insufficient and difficult to read and recommended the use of roadway-sized signs. She concluded that closing Commercial Boulevard would be harmful to restaurants.

Mr. Ciani advised that he represented four restaurants which were his tenants, and again stated that the event should be moved to a different Downtown location.

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Mayor Vincent commented that in the past, Friday Night Music was not a Town-sponsored event, but was put on by two restaurants to the benefit of all Downtown businesses. He asserted that many of the Downtown businesses have requested the return of events to assist them, but now that the event series is proposed, there is criticism that it would be taxpayer funded. He suggested that if the businesses can come up with a better plan, they should present it to Town Staff.

Mayor Vincent continued that he was open to setting aside plans for the Friday Night Music Series until the affected businesses brought forward a proposal. He concluded that it would be unlikely to reach an agreement that satisfies all affected parties, and that he was taken aback by the resistance to the proposal.

Commissioner Oldaker commented that he agreed with the Mayor that the Town was seeking to spend money with the intent of helping its businesses. He suggested that action on the 2024 Friday Night Music Series be postponed until the October 17, 2023 Commission meeting, by which time the public can provide additional feedback.

Vice Mayor Malkoon also felt the businesses should bring forward a proposal with the intent of partnership with the Town, including how both parties will contribute to the partnership.

It was suggested by Commission consensus that the Item would be brought back at the October 24, 2023 meeting for additional consideration. Town Manager Connors added that Staff meets every Monday to discuss the ongoing construction project, and will email the business community to request their ideas and proposals. Public Safety Officers will also be present to provide input.

Commissioner Pouloupoulos requested clarification of what the Town is trying to achieve when the Item is brought back on October 24, including what is asked of the businesses and how any plans might be funded. He pointed out that the original Friday Night Music events were held by two businesses, while the current proposal is for an event, funded by taxpayer dollars, to be determined by the Downtown businesses. He asked what will be required of businesses that bring forward plans, as well as whether or not the Town would reach out to the public for their feedback as well. He concluded that the Town should not be paying for an event of this nature without some type of private contribution or sponsorship.

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Commissioner Pouloupoulos made a motion, seconded by Vice Mayor Malkoon, to set aside the Friday Night Music Series and give it back to the private entities.

Commissioner Pouloupoulos further clarified that an affirmative vote on his motion would mean the Town was no longer a sponsor of the Friday Night Music Series, which would be returned to private entities if they wish, with any required permits to be submitted to the Town for consideration.

Motion carried 4-1 (Commissioner Strauss dissenting).

14. COMMISSIONER COMMENTS

None.

15. ORDINANCES 1ST READING

None.

16. ORDINANCES 2ND READING

- a. **ORDINANCE 2023-03: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, AMENDING CHAPTER 6, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE I "IN GENERAL" OF THE CODE OF ORDINANCES TO UPDATE REGULATIONS REGARDING CONSTRUCTION FENCING REQUIREMENTS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Development Services Director Campbell explained that Chapter 6 of the Town's Code of Ordinances requires installation of temporary perimeter fencing on certain construction projects. To clarify existing language, Town Staff has proposed the changes outlined in the Staff Report to ensure that construction fences will be uniform in appearance when installed.

At the August 15, 2023 Commission meeting, Staff presented the proposed Ordinance for review, and it was unanimously approved upon first reading, with the insertion of the

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words “to a structure” at line 31. The updated Ordinance is now before the Commission for final approval.

Commissioner Poulopoulos made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

- b. ORDINANCE 2023-04: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 14.3 “PARKS AND RECREATIONAL FACILITIES” OF THE TOWN CODE OF ORDINANCES TO DEFINE AND REGULATE DESIGNATED CHILDREN’S PLAY AREAS AND TO OTHERWISE UPDATE AND CLARIFY CHAPTER 14.3; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND FOR AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Commissioner Poulopoulos made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

17. RESOLUTIONS – PUBLIC COMMENTS

- a. Resolution 2023-58: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE 2022/2023 FISCAL YEAR BUDGET IN ACCORDANCE WITH THE ATTACHED EXHIBIT “A”; AUTHORIZING APPROPRIATIONS AND EXPENDITURES IN ACCORDANCE WITH THE 2022/2023 FISCAL YEAR BUDGET AS AMENDED; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Assistant Finance Director Edner Saint-Jean explained that the FY 2022-2023 budget must be presented to the Commission to address any inconsistencies between the amount budgeted and the amount incurred. This must be completed no later than 60 days after the end of the fiscal year.

Staff requests approval of the following amendments to the FY 2022-2023 budget:

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- General Fund: removal of a purchase of a Bougainvillea Drive property
- Additional revenue from different sources
- Expenditure for municipal elections
- Contractual services
- Capital Fund: Downtown refurbishment project
- Building Fund: additional revenue from building permits

Commissioner Pouloupoulos requested clarification of the Capital Improvement Fund budget amendment, including why funds are being reallocated from Friedt Park to the Downtown refurbishment project. He pointed out that the Town is required to address some legal issues related to Friedt Park.

Deputy Town Manager/Public Works Director Rubach advised that this change is because the work on the Downtown project is budgeted in the current fiscal year. Money budgeted for the Friedt Park improvements has been moved to the next year.

Commissioner Oldaker advised that all the items included in the proposed budget amendment have already been discussed by the Commission throughout the year. He characterized the amendment as a formality.

Commissioner Oldaker made a motion, seconded by Commissioner Pouloupoulos, to approve. Motion carried 5-0.

18. QUASI JUDICIAL PUBLIC HEARINGS

None.

19. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 8:58 p.m.



Mayor Chris Vincent

ATTEST:

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Town Clerk

10/20/2023 | 6:43 AM PDT

Date



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, October 17, 2023
6:30 PM**

1. CALL TO ORDER, MAYOR CHRIS VINCENT

Mayor Chris Vincent called the meeting to order at 6:34 p.m. Also present were Vice Mayor Edmund Malkoon, Commissioner Alfred “Buz” Oldaker, Commissioner Theo Pouloupoulos, Commissioner Randy Strauss, Town Manager Linda Connors, Town Attorney James White, Deputy Town Manager/Public Works Director Ken Rubach, Assistant to the Town Manager Courtney Easley, Development Services Director Jhanelle Campbell, Director of Budget and Finance Lucila Lang, Assistant Finance Director Edner Saint-Jean, Senior Special Events and Marketing Coordinator Katie Anderson, and Town Clerk Katrina Adler.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

Pauline Brooks McGuinness gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

Mayor Vincent requested that Old Business Item 12.a, Reconsideration of Downtown Music Event, be heard immediately following Presentations.

5. PRESENTATIONS

a. Presentation by Broward County Mayor Lamar Fisher

b. Nova Southeastern University Coral Restoration Program

The Commission viewed a presentation on Nova Southeastern University’s coral restoration program, which has been underway at three sites over the last five years. The University has conducted over 20 monitoring events. Continuing efforts include maintenance of coral nurseries and exchanges between colonies in different regions of Florida, which will help create a larger genotype bank.

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The following Item was taken out of order on the Agenda.

12. OLD BUSINESS

a. Reconsideration of Friday Night Music Event

Mayor Vincent recalled that at the September 26, 2023 Town Commission meeting, the Commission voted 4-1 against scheduling the 2024 Friday Night Music Series. As he had voted with the majority at that time, he now requested that this Item be reconsidered. If there is consensus in favor of reconsideration, he wished to deliberate and vote upon this Item at tonight's meeting so the Item would be "fast-tracked" and would not have to be revisited at a subsequent meeting.

The Commissioners agreed by consensus to reconsider the Item.

Mayor Vincent requested that Staff provide a brief presentation on what has happened since the previous vote.

Senior Special Events and Marketing Coordinator Katie Anderson explained that since the September 26, 2023 meeting, a number of Town businesses have formed a committee and reached consensus that there is support for the 2024 Friday Night Music Series. That committee has agreed to help raise funds toward the cost of the event. The owners of some Downtown restaurants have used their collective buying power to secure sponsors for the event. She concluded that the Town is supportive of the 2024 Friday Night Music Series with the involvement of the community.

Mayor Vincent thanked the committee for recognizing the need for a vibrant Downtown business environment, and noted that the Commission is aware of what those businesses have gone through in recent months while Downtown improvements are under construction. He was in favor of a partnership between the Town and these businesses, and of a plan that would not fund the event using only taxpayer money.

Vice Mayor Malkoon also thanked the businesses which have worked with Town Staff to reach a compromise on the event. He emphasized the importance of a vibrant Downtown business environment to the Town.

Commissioner Pouloupoulos recalled that his concern with the proposed event, both in 2024 and in previous years, had been with taxpayers funding a program that will

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primarily benefit businesses. While he was in favor of proceeding with the event, his remaining concern was with the dates, which are during the height of the tourist season. He suggested pushing the proposed dates back so the event will run through March, April, May, and June 2024 rather than beginning in January. He felt this would have a positive effect during the off-season when less pedestrian traffic is expected.

Commissioner Pouloupoulos added that he was not in favor of closing Commercial Boulevard to accommodate the event.

Commissioner Oldaker advised that he had spoken with both Town Staff and representatives of Downtown businesses about the proposed event. He emphasized the importance of partnership and approaching the event from a different perspective.

Commissioner Strauss observed that Town residents as well as businesses are appreciative of and benefit from the event. He also recalled that he has been in favor of having businesses act as partners in the event.

Mayor Vincent requested additional information on the details of the proposed event. Senior Special Events and Marketing Coordinator Anderson explained that the Town will coordinate with the Broward Sheriff's Office (BSO) and the Pompano Beach Fire Department, with Town Staff overseeing setup and breakdown of the event. The Town will discuss issues such as signage with the businesses prior to the beginning of the event, and will serve as the main point of contact to provide commentary between the Commission and the businesses going forward.

Marc Falsetto, representing Tacocraft, pointed out that the past summer has been difficult for Downtown businesses due to weather and heat as well as the ongoing Downtown renovation project. Many businesses felt the 2024 Friday Night Music Series would be a good way to welcome both residents and tourists back to the Downtown area. By leveraging the relationships of key Downtown businesses, a minimum of \$5000 per event has been raised.

Mr. Falsetto briefly addressed the event dates, advising that he was in favor of beginning in January 2024; however, he emphasized that the businesses are open-minded and will continue to meet on a monthly basis. They are also leveraging existing relationships with staging, sound, and lighting professionals, which lowered the price of these services by 60%.

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Mayor Vincent also addressed the event dates, stating that he felt the businesses know what is best in this case. He suggested that if costs can be controlled, there may be an opportunity to schedule a sixth event.

Town Manager Linda Connors stated that Staff is aware of what other municipalities are planning, which has affected the proposed dates for the Friday Night Music Series. Staff is working to consistently plan the event on the third Friday of each month, with the exception of March 2024. She also noted that partnership with the businesses will save the Town significant money, which may make it easier to add more events.

Senior Special Events and Marketing Coordinator Anderson reviewed the proposed rescheduled 2024 event dates:

- January 26
- February 23
- March 22
- April 26
- May 24

Commissioner Pouloupoulos made a motion, seconded by Commissioner Oldaker, to approve the Item and its requested dates. Motion carried 5-0.

6. PUBLIC COMMENTS

At this time Mayor Vincent opened public comment.

Linda Thompson Gonzalez, resident, stated that the Solid Waste Disposal/Recyclable Processing Authority's Governing Board met for the first time the previous week. This Board consists of representatives of 28 Broward municipalities working to address the County's solid waste crisis. She recognized Commissioners Oldaker and Strauss, as well as Technical Advisor Susan Leven, for their work on this matter.

Ms. Thompson Gonzalez continued that the creation of this Authority will free Broward municipalities from the dictates of a for-profit approach to waste disposal and recycling, which has been inconsistent throughout the County. This change can provide towns and cities with the opportunity to realize significant cost savings while contributing to a cleaner environment.

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Ms. Thompson Gonzalez advised that in light of the potential savings and other benefits, she has recommended the insertion of the word “organics” into the inter-local agreement. There is no language in Florida Statutes that would prohibit this inclusion.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

7. PUBLIC SAFETY DISCUSSION

None.

8. TOWN MANAGER REPORT

a. Town Manager Report

Town Manager Connors reported that Boo!-By-The-Sea is scheduled for Saturday, October 28, 2023 from 10 a.m. to 1 p.m. The event will feature games, entertainment, and food. The Town is partnering with its businesses located on the west side for this event.

Downtown construction continues and is moving quickly. Most infrastructure improvements are complete and the contractors are working on putting the area back together. Existing trees are being replaced with coconut palms, and pavers are being replaced along El Mar Drive and the sidewalk on the north side. The wall is being constructed on the south side of the street. The project remains on schedule.

Sea Shorts is underway, with performances scheduled for October 20 and 21, 2023 at 7 p.m. and October 22 at 4 p.m. This event features nine original short plays. Doors open 30 minutes before showtime. The event is free of charge.

The Hibiscus Drive project is complete between Sea Grape Drive and Bougainvillea Drive.

The Town is working on a recycling drive initiated by Town Staff. Any residents with old and/or unused sneakers are encouraged to bring these to the Town, where they will be recycled. Collection locations include Town Hall, the Visitors Center, and the Community Center.

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A citizen participation meeting is scheduled at 6 p.m. on October 23, 2023 regarding 4305 Bougainvillea Drive. The next Town Commission meeting is October 24 at 6:30 p.m. A Special Magistrate meeting will be held on October 26 at 5 p.m. The next Planning and Zoning Board meeting is scheduled for November 1 at 6 p.m.

Vice Mayor Malkoon requested additional information on the Town's Circuit-By-The-Sea program, asking if presentations are planned to discuss the level of service during the coming tourist season. Town Manager Connors stated that three Circuit vehicles are in use during the off-season. When the tourist season begins, another Circuit vehicle will be added for a total of four. The Town will monitor this schedule.

Town Manager Connors added that if a resident's initial Circuit request shows a long wait time, this may recalibrate to a more reasonable time within a few minutes. He requested a presentation from Circuit addressing concerns regarding these time frames, as well as reasons for cancellations.

Commissioner Oldaker thanked all parties involved in the completion of the Hibiscus Drive sidewalk/crosswalk project.

b. August 2023 Finance Report

Assistant Finance Director Edner Saint-Jean presented the August 2023 Finance Report, noting there were no significant changes. The Building Department collected nearly \$2 million, which exceeded the budgeted amount. Revenue from the Parking Fund was 44% higher than budgeted in fiscal year (FY) 2023. Overall expenditures and revenues met expectations. Staff is currently working on the Town's audit.

9. TOWN ATTORNEY REPORT

None.

10. APPROVAL OF MINUTES

a. Approval of Minutes for 9-13-23 and 9-26-23.

Commissioner Strauss made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

11. CONSENT AGENDA

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- a. **Resolution 2023-59: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, ADOPTING THE UPDATED BROWARD COUNTY ENHANCED LOCAL MITIGATION STRATEGY PLAN; PROVIDING FOR IMPLEMENTATION, CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.**
- b. **Resolution 2023-61: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE LEASE AGREEMENTS WITH ENTERPRISE FM TRUST FOR A 2024 CLUB CAR CARRYALL 750 LSV AND A 2024 FORD ESCAPE SUV, PURSUANT TO THE TERMS AND CONDITIONS OF THE OPEN-END MASTER EQUITY LEASE AGREEMENT BETWEEN THE TOWN AND ENTERPRISE FM TRUST; PROVIDING FOR IMPLEMENTATION AND FOR AN EFFECTIVE DATE.**
- c. **Hardship Parking Permit Applications**

Commissioner Pouloupoulos made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

13. NEW BUSINESS

a. Veterans Day 2023 Ceremony

Senior Special Events and Marketing Coordinator Anderson stated that the Town's annual Veterans Day ceremony is scheduled for Saturday, November 11, 2023 in El Prado Park from 10 a.m. to 11:30 a.m., with Jarvis Hall to serve as a backup location in the event of inclement weather. She thanked Commissioner Strauss for serving as Chair of this year's event.

The Veterans Day program will feature the Pompano Beach Fire Department's Honor Guard, BSO's Rifle Volley, Honor Flight, and more. Veterans are encouraged to register for the event so they can be recognized during the program. Registration forms are available at Town Hall, the Visitors Center, the Community Center, and on the Town's website. Registrants are asked to submit a photograph from their time in service with their registration.

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Senior Special Events and Marketing Coordinator Anderson added that an email was sent to all Town businesses regarding a tent at the ceremony. Any businesses with promotions may provide information at this tent. Staff recommends approval of the November 11 Veterans Day ceremony.

Commissioner Strauss also encouraged all residents to attend this annual event.

Commissioner Pouloupoulos made a motion, seconded by Commissioner Strauss, to approve. Motion carried 5-0.

- b. Resolution 2023-60: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PIGGYBACK AGREEMENT WITH JANICE M. RILEY INC. DBA THE PAVING LADY FOR BOLLARD INSTALLATION AND PAVEMENT RESURFACING ON EL MAR DRIVE AND COMMERCIAL BOULEVARD IN AN AMOUNT NOT TO EXCEED \$224,584.49; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR IMPLEMENTATION AND FOR AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Deputy Town Manager/Public Works Director Ken Rubach stated that this request would install in-ground bollards in two phases. The Town currently uses a combination of “water walls” and BSO vehicles to serve as deterrents. In-ground bollards can be removed and reinstalled as needed, which is less cumbersome than the water barricades. They would be stored in the Public Works building when not in use.

The first phase would be completed on Commercial Boulevard between A1A and El Mar Drive, which is currently closed. Contingency funds were used to purchase the first set of bollards. The cost of the project’s second phase is significantly lower, as the bollards have already been purchased. This phase will place bollards on El Mar Drive and repave that section of roadway between two alleyways, providing new asphalt and pavement markings.

Deputy Town Manager/Public Works Director Rubach added that the bollards are traffic-rated and will serve in the same capacity as the current water wall. BSO vehicles will still be used to provide an additional level of security.

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Commissioner Oldaker made a motion, seconded by Vice Mayor Malkoon, to approve. Motion carried 5-0.

14. COMMISSIONER COMMENTS

Vice Mayor Malkoon advised that he recently represented Lauderdale-By-The-Sea at the Greater Fort Lauderdale Board of Realtors' Mayors' Breakfast. Topics addressed at this meeting included "selling" the Town as well as affordability. He also encouraged residents to support Sea Shorts, which he recently attended.

Mayor Vincent thanked Vice Mayor Malkoon for attending the Mayors' Breakfast.

15. ORDINANCES 1ST READING

- a. Ordinance 2023-04 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE I "IN GENERAL," SECTION 30-11 "DEFINITIONS" AND ARTICLE V "ZONING," SECTION 30-311 "BOATS, BOAT LIFTS, BOATHOUSES, MOORING, AND DOCKING" AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Development Services Director Jhanelle Campbell recalled that at a March 2022 Town Commission meeting, the Commission directed Staff to review the marine structure Code of neighboring municipalities. As a result of this research, Staff learned that the Town's regulations were much more restrictive than other municipalities' regulations. They brought forth Ordinance 2022-02 to address the following key issues:

- Clarification of definitions
- Removal of duplicative terms
- Institution of regulations for waterways both wider and narrower than 100 ft.
- Establishment of a new side setback for docks at commercial properties abutting residential properties

Ordinance 2022-02 did not address any changes to the distances of marine structures other than docks. In April 2023, Staff was directed to review regulations for those

Lauderdale-By-The-Sea
Regular Town Commission Meeting
October 17, 2023

structures in other municipalities. Staff is now bringing forward an Ordinance to address these items, which include:

- Removal of the requirement for the navigational channel to be the center 40% of the width of the waterway
- Extension of the allowance for boat lifts to protrude into the waterway from 20% to 25%
- Relocation of setbacks for marine structures in waterways over 100 ft. in width to the correct location

Development Services Director Campbell noted that, for example, 20% of an 80 ft. waterway would be 16 ft. By changing this percentage to 25%, an extra 4 ft. of space is provided, which affects the property owner's ability to have both a dock and a boat lift while still providing space for boats to enter and exit the waterway.

At the September 19, 2023 Planning and Zoning Board meeting, Staff presented the proposed Ordinance for consideration and received a 4-1 vote in favor of approval. Staff feels the proposed changes will increase flexibility for residents to install boat lifts and docks on their properties. Staff recommends approval of the Ordinance.

Commissioner Strauss commented that the proposed Ordinance establishes a clear and practical way of dealing with boat lifts and docks. He thanked Staff for their work on the updated regulations.

Commissioner Strauss made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

16. ORDINANCES 2ND READING

- a. **Ordinance 2023-06 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, SETTING MARCH 19, 2024 FOR THE TOWN'S 2024 GENERAL MUNICIPAL ELECTION DATE TO COINCIDE WITH THE PRESIDENTIAL PREFERENCE PRIMARY ELECTION DATE AS ALLOWED BY SECTION 101.75, FLORIDA STATUTES; ESTABLISHING THE QUALIFYING PERIOD FOR THE 2024 GENERAL MUNICIPAL ELECTION TO OCCUR FROM NOON ON TUESDAY, JANUARY 2, 2024 THROUGH NOON ON TUESDAY, JANUARY 9, 2024 AS REQUIRED BY THE SUPERVISOR OF ELECTIONS; PROVIDING FOR THE DATE ON WHICH ELECTED OFFICIALS TAKE OFFICE; PROVIDING FOR SEVERABILITY;**

Lauderdale-By-The-Sea
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**PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE
DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Commissioner Oldaker made a motion, seconded by Commissioner Strauss, to approve.

Vice Mayor Malkoon requested that changes to the Commission's Code of Ethics, including use of Form 6 for reporting requirements, be highlighted so new elected officials would be aware of it.

Motion carried 5-0.

17. RESOLUTIONS – PUBLIC COMMENTS

None.

18. QUASI JUDICIAL PUBLIC HEARINGS

None.

19. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 7:49 p.m.



Mayor Chris Vincent

ATTEST:



Town Clerk

11/17/2023 | 6:58 AM PST

Date



Agenda Item No: 13.a.

Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Katie Anderson, Special Events and Community Marketing Coordinator

Submitting Department: Administration

Item Type: Action Item

Agenda Section: NEW BUSINESS

Subject Title: Special Event Application: Feast of the Holy Epiphany 01.06.25

Explanation: Father Peter Zougras (the "Applicant") of St. Demetrios Greek Orthodox Church has submitted a Special Event Application (**Exhibit 1**) for the Feast of the Holy Epiphany (the "Event"). The event is scheduled to take place on Monday, January 6, 2025.

This Event is a recurring event and has previously taken place in Town.

THE FEAST OF THE HOLY EPIPHANY MONDAY, JANUARY 6, 2025	
Start of Setup	8:00 AM
Event Begins	9:00 AM
Event Ends	2:00 PM
Cleanup Completed	3:00 PM

The Event is designed to take place in the South portions of the Beach Pavilion Plaza and Connie Hoffmann Plaza. With this arrangement, Aruba Beach Cafe seating is not impacted.

Approximately 75 attendees are anticipated. The Event will consist of a ceremony in the Plaza, followed by a dove release and cross retrieval on the beach, concluding with lunch at Anglin Beach Cafe.

As a 501C-3 organization, the Applicant has requested that the Town waive any fees associated with the Event. This has been approved by the Commission in previous years and falls in line with the decisions awarded to other religious-affiliated events that take place in the Town, such as the Chanukah Festival and Easter Sunrise Service.

APPLICABLE FEES PER RESOLUTION 2024-29 (EXHBIT 2)	
Plaza Event Application (submitted 60 days prior to event date)	\$100
Out of Town Non-Profit Organization Plaza Use Fee (Beach Pavilion Plaza)	\$425 per day
Out of Town Non-Profit Organization Plaza Use Fee (Connie Hoffmann Plaza)	\$425 per day
TOTAL:	\$950.00

The Applicant is requesting that Town staff bag the beach showers directly East of the Pavilion prior to the Event's start time.

Recommendation: Staff recommends approval of the Special Event Application based on the conditions outlined in the Event Permit (**Exhbit 3**).

Staff is requesting Commission direction on the waiver of the fees.

Exhibits:

1. Sp. Event Application_Feast Holy Epiphany_01.06.25
2. Resolution 2024-29 Special Event Fees
3. LBTS Permit_FeastoftheEpiphany_01.06.25

EXHIBIT 1



SPECIAL EVENT APPLICATION

We are thrilled you are interested in hosting your event with the
Town of Lauderdale-By-The-Sea!

PRIVATE EVENT	SPECIAL EVENT
Application due at least 30 days prior to event date	Application due at least 60 days prior to event date
Event anticipates 25 guests or more	Any event being advertised to the general public.
NOT being advertised to the general public	

Late application fees will apply if submitted within the designated submission window.

Special Event Applications must go before the Commission for final approval. You will be notified when your application has been approved by staff and has been assigned to a commission meeting agenda. While not mandatory, attendance at your designated meeting is recommended.

This application can be found on our website at www.lbts-fl.gov/town/docs.htm. We ask that you please complete the application and return to events@lbts-fl.gov.

An application is considered complete when:

- All applicable sections of the application are completed.
- Detailed site map is included.
- Application fee of \$125* has been paid (*or late fee if applicable).

PLEASE
WAIVE
OF

If the applicant is seeking sponsorship / co-sponsorship from the Town of Lauderdale-By-The-Sea, a Statement of Benefit is required by Town Code and shall be included with your application.

Please keep in mind – Turtle Nesting Season runs March 1st through October 31st. If any activities are to take place on the sand, the Event organizers shall ensure a minimum buffer of 10 feet is kept clear around any marked turtle nests, or any areas that appear to be a new nest. All activity is to stay away from active nests. No holes are to be dug in the sand west of the high tide line.

For any questions, please reach out to the Events & Marketing Manager.

We look forward to assisting you!

Katie Anderson
Events & Marketing Manager
katiea@lbts-fl.gov • 954-640-4209



SPECIAL EVENT APPLICATION

EVENT DETAILS

Name of Event: THE FEAST OF THE HOLY EPIPHANY

New Event: Returning Event: ✓

Day(s) + Date(s) of Event: MONDAY JAN 6 2025

Proposed Location of Event: 1/2 OF PAVILION 1/2 OF OCEAN PLAZA

How many total people do you anticipate onsite at any peak time?

Participants: 75 Spectators: 75 Volunteers: 12

ACTIVITY	DAY	TIME
Start of Setup:	JAN 6	8:00 A.M
Start Time of Event:	JAN 6	9.00 AM
EVENT		
End Time of Event:	JAN 6	2 PM
Cleanup Completed By:	JAN 6	3 PM

HOST OR SPONSORING ORGANIZATION

Name: FR. PETER ZOURGAS S.T. DEMETRIOS Greek ORTHODOX

Address: 820 NE 14 AVE Ft. Lauderdale 33304 Church

Is applicant a non-profit organization (501 (c) (3)? ✓ YES NO

PERSON SUBMITTING APPLICATION ("Responsible Party")

Name: FR. PETER ZouGRAS ST. DEMETRIOS Greek Orthodox
Address: 820 NE 14 AVE Ft. Lauderdale 33304 Church.
Phone: 954-467 1515 Email: FRZOUGRAS@STDEMETRIOS.ORG

ON-SITE EVENT REPRESENTATIVE

Same as above

Name: SPIRO MARCHEROS
Address: 2 Commercial BLVD
Phone: 954 629 5099 Email: MARCHEROS@aol.com

REQUEST FOR TOWN INVOLVEMENT

Are you requesting Town be involved with this event in any way?

YES ☒ NO

If yes, please describe:

BAG SHOWERS AT
PAVILLION From 7AM - 4pm

SOUND SYSTEMS

The event sound systems shall be operated so as not to violate the Town's code, including and especially Section 13-6, Noise Limitation. Violations of the Town's noise ordinance are grounds for immediate termination of the source of the noise and potentially the event.

Do you plan to use amplified sound?

- ☒ Proposed amplified sound / speaker system
☒ Proposed live music
☒ Planned recorded music
☒ Do you require electrical connections for any of the above?

If yes, which? _____

TENTS, CANOPIES, STAGES, BLEACHERS

Tents are generally defined as temporary structures having two or more sidewalls or drops.

A canopy is a tent without sides.

All tents or canopies larger than 120 sq. feet, multiple canopies without separation, and stages require a building permit. The use of tents or larger canopies requires approval of the Fire Marshal and are required to have building permits obtained via the LBTS building department prior to the event.

Manufacturer's labels are required to be attached to tents and canopies.

Rental agencies shall provide documentation of the flame spread labeling of 25 or less submitted with the application.

Stages and bleachers shall include product approvals that are supplied by the manufacturer.

Indicate if any of the following will be assembled at the event and include locations on your site map. Please list sizes and numbers of each:

Tents:

2

Canopies:

2

Stages:

1

Bleachers:

1

Size & Load Max: _____

UTILITIES

All utilities requirements shall be approved by the Director of Development Services and the Fire Marshal prior to application submission to the Town Commission. Depending on location of the event, electric and/or water may be available from the Town for a fee.

All electrical requests shall meet the requirements of the Florida Building Code with final approval from the Town's Building Official at least 30 days prior to the event.

Will any electrical equipment be installed in conjunction with the Special Event (i.e. lighting, outlets for cooking, etc.)?

____ YES ✓ NO

If the event requires the following on public property, list what equipment is to be installed and locations (include voltage, amperage, and phases of wiring) as well as vendor name providing the equipment.

2 Electrical Power: _____

2 Water: _____

2 Gas, Propane, BBQ Grills, Generators: _____

N

Fuel Storage: _____

SIGNAGE

All signage should be included in the application. Information about signage shall include location, colors, size, and number of signs. Indicate signs to be placed in any right of way that directs traffic to the event. Signage is subject to approval and shall not be installed without permission.

Are you requesting permission to erect signage for this event?

____ YES

✓ NO

If yes, please describe: _____

RESTROOMS

Permit holder is required to obtain written approval from Town establishment if said establishment is allowing participants to use their restroom facilities.

Number of additional Town restrooms being provided: _____

(Please include on site plan)

N/A

TRAFFIC CONTROL / STREET CLOSURES

Street closures may be required at the Permit Holder's expense.

Are you requesting that any public streets be closed for the event?

____ YES

✓ NO

If yes, please indicate the streets and times the closure is being requested:

NONE

Are you requesting the reservation of any Town parking spaces for the event?

____ YES

✓

If yes, please indicate which and how many spaces are being requested:

All parking fees are to be paid at least 30 days prior to the event.

VEHICLES

Are you requesting permission to drive or park on Town grounds?

☐ YES ☒ NO

If yes, please indicate the type(s) of vehicles, locations, and times that are being requested:

Permit Holder shall be responsible for any damage to Town property.

OFF DUTY POLICE / CODE COMPLIANCE OFFICERS

Off duty police are required, at the Permit Holder's expense, for street closures, events with alcohol or large crowds, as determined by the Broward Sheriff's Office. Large events may require a Code Compliance officer to ensure compliance with Town's codes.

Do you anticipate needing off duty police officers for your event?

☐ YES ☒ NO

Do you anticipate needing code compliance officers for your event?

☐ YES ☒ NO

ALCOHOL

State license is required to be submitted to the Town at least 30 day prior to the event.

Are you planning on selling alcoholic beverages at the event?

Please note beverage stations on site map.

☐ YES ☒ NO

If yes, has a liquor permit been obtained by the State of Florida?

☐ YES ☐ NO

Contact information for all license holders who will be providing alcohol:

FEES

Are there any fees or donations that will be collected on site from participants or spectators?

☐ YES ☒ NO

If yes, please describe: _____

CONCESSIONS

Are you planning to have any kind of concessions? ☐ YES ☒ NO

If yes, has the Florida Health Department approved the food vending site plans?

☐ YES ☐ NO

Is the food provided by a nonprofit organization? N/A YES N/A NO

Is the food: ☐ Free of charge? ☐ For sale?

Do all food vendors have a temporary food service permit? N/A YES N/A NO

Please list the type(s) of food that will be served: _____

Are you requesting any of the following types of cooking equipment to be used on site?

- | | | |
|--|--|---------------------------------------|
| ☐ Charcoal Grills | ☐ Fryers | ☐ Open Fires |
| ☐ Propane Grills | ☐ Smokers | ☐ Hoods |
| ☐ Concession Trailers | ☐ Warmers | ☐ LP Tanks |
| ☐ Sterno | ☐ Refrigerators | ☐ Other: _____ |

SALE OF MERCHANDISE

Are you requesting approval to offer other items for sale at the event?

☐ YES ☒ NO

If yes, please describe: _____

ANIMALS

Any exhibition or similar undertaking in which animals are required to participate in performance for the amusement or entertainment of an audience is subject to Town Commission approval.

Are animals included in your event? ☒ YES ☐ NO

If yes, please describe: RELEASE OF DOVES
Three White Doves

FIREWORKS

Fireworks require a separate approval process and application.

Are you requesting approval to discharge fireworks at the event?

☐ YES ☒ NO

RIDES

Rides or other amusement may require a State of Florida inspection. Copies of contracts with any providers of rides, mechanical devices, and amusements shall be submitted to the Town at least 30 days prior to the event.

Are rides included in your event? ☐ YES ☒ NO
(i.e. mechanical, electrical, inflatable, bounce houses, slides, etc.)

If yes, please describe: _____

VENDORS

A list of all vendors with the company name is required for initial approval and a final list is required at least 30 days prior to event and subject to approval (please add on a separate page).

FIRE WATCH / EMS ONSITE

If required by the Fire Marshal, the applicant shall provide a fire watch and / or an EMS Crew during the event. Large events or those using combustible materials shall require qualified stand-by personnel and the appropriate equipment, the cost of which is at the responsibility of the Permit Holder.

I understand that Fire Watch or EMS Services may be required at the Event's expense

Initial: [Signature]

NO BALLOONS RELEASED

When balloons are released over the ocean, they become a major source of pollution and significantly increase the mortality rate among sea turtles, birds, and other marine life. To help reduce the threats caused by balloons, I agree that there will be no balloons at this event and that I have been informed that the release of balloons is illegal under Florida Statute 379.233. Failure to abide by this requirement will result in the cancellation of the current event and denial of future special event permits.

I agree no balloons will be released.

Initial: _____



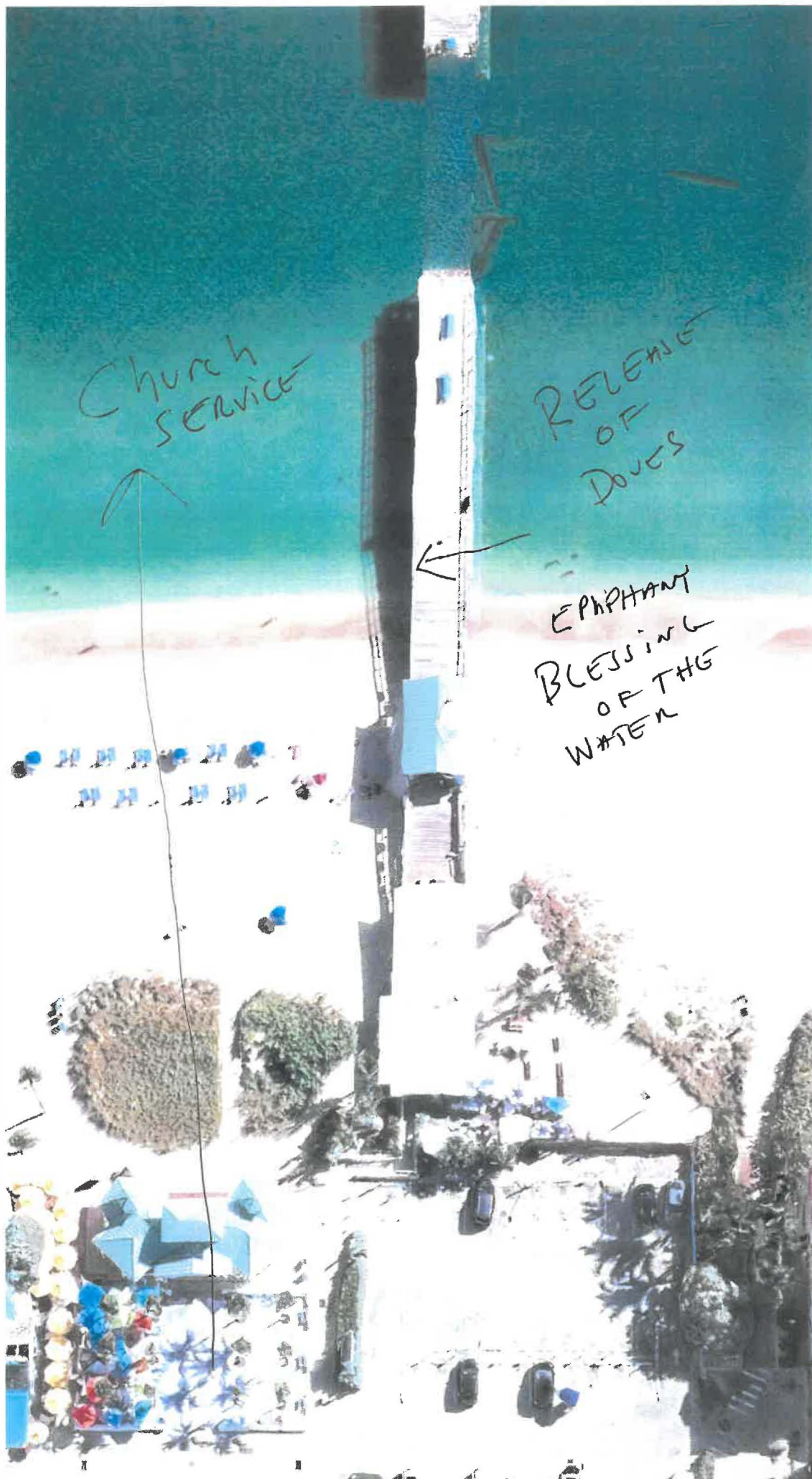
INSURANCE

Insurance requirements differ depending on the type of event and if alcohol is served.

For events not serving alcohol and without fireworks, the Applicants shall provide a Certificate of Liability Insurance written in comprehensive form naming the Town as additional insured in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate for property damage with thirty days' written notice required for cancellation.

Certificate of Liability Insurance naming the Town as additional insured is required from all Event businesses, promoters, and other related event planners.

An approved form of a Certificate of Liability Insurance may be required with your Application for approval by the Town Commission and / or shall be provided to the Town at least 30 days prior to the event date.



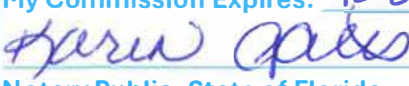
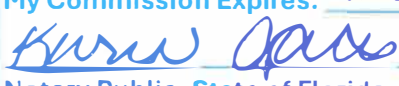
PERMISSION OF THE PROPERTY OWNER

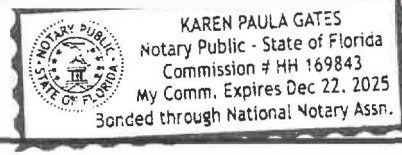
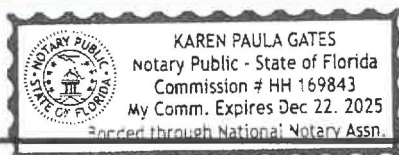
Applicant's and Property Owners Certification

An event held on property that is not owned by the applicant requires the permission of the property owner, which is granted by having the property owner sign this special event application.

By signing this event application, the petitioner agrees to all terms, conditions, and indemnification in this application, and understands that this application or the approval of this event application by the Town Commission does not grant any permission to violate any laws, ordinances, or statutes.

Additions and/or revisions to this application must be submitted in writing.

Applicant	Property Owner
I understand the Town's requirements to hold a special event and the information provided in this application is complete to the best of my knowledge.	I give the applicant permission to use my/our property for the proposed special event and I understand the Town's requirements to hold a special event and the information given by the applicant is complete to the best of my knowledge.
Applicant's Signature (required): 	Property Owner's Signature (required): 
Date: <u>10/30/24</u>	Date: <u>10/24/24</u>
Applicant (Print information below)	Property Owner (Print information below)
Name: <u>FATHER Peter Zougras</u>	Name: <u>Fisherman's Pier</u>
Title: <u>PRIST</u>	Title: <u>CEO</u>
Organization: <u>St. DEMETRIOS</u>	Organization: <u>Anglin's Beach Cafe</u>
Telephone: <u>954 4671515</u>	Telephone: <u>954 625 5099</u>
Email: <u>FR.ZOUGRAS@ST.DEMETRIOS.ORG</u>	Email: <u>MARCHELOS@aol.com</u>
STATE OF FLORIDA:	STATE OF FLORIDA:
COUNTY OF BROWARD:	COUNTY OF BROWARD:
SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public of the State of Florida, by <u>Peter Zougras</u> who is personally known to me / provided <u>FL DL</u> as identification and who did / did not take an oath.	SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public of the State of Florida, by <u>Spiro Marchelos</u> who is personally known to me / provided <u>FL DL</u> as identification and who did / did not take an oath.
My Commission Expires: <u>12.22.25</u>	My Commission Expires: <u>12.22.25</u>
 Notary Public, State of Florida	 Notary Public, State of Florida



APPLICANT'S CERTIFICATION

By signing this event application, the petitioner agrees to all terms, conditions, and indemnifications in this application, and understands that this application or the approval of this event application by the Town Commission does not grant any permission to violate any laws, ordinances, or statutes.

Additions and / or revisions to this application shall be submitted in writing.

I understand the Town's requirements for park use and the information provided in this application is complete to the best of my knowledge.

 10/30/24
Applicant's Signature Date

Peter Zeugras (718) 314-4703
Applicant's Printed Name Telephone

RESOLUTION 2024-29

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, ADOPTING AN UPDATED FEE SCHEDULE FOR SPECIAL EVENTS, AND OTHER USE OF PUBLIC PROPERTIES, BY AMENDING THE FEES RELATED TO SPECIAL EVENTS, PARK USES, AND STREET PERFORMERS; PROVIDING FOR CONFLICT, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 1 “General Provisions,” Section 1-13 “Fees,” of the Code of Ordinances provides that, except as otherwise provided by the Code or other applicable law, fees related to any process or approval established by the Code (including but not limited to service, application, permit, license and user fees) may be established, repealed, and amended by resolution of the Town Commission; and

WHEREAS, On September 24, 2012, the Town Commission adopted Resolution No. 2012-35, establishing fees for the Rental of Jarvis Hall; and

WHEREAS, On May 27, 2014, the Town Commission adopted Resolution 2014-18, adopting policies and fees governing the use of the Dunes Plaza, Ocean Plaza, and Beach Pavilion; and

WHEREAS, On September 23, 2014, the Town Commission adopted Resolution 2014-20 revising fees for the Rental of Jarvis Hall and adopting and combining fees for Parks and Special Events; and

WHEREAS, on September 23, 2014, the Town Commission adopted Resolution 2014-30, amending the Development Review Permit and License Fee Schedule to consolidate fees and include missing fees; and

28 **WHEREAS**, on February 10, 2015, the Town Commission adopted Resolution 2015-05,
29 which included fees related to Medical Marijuana Permits, Street Performers and Vending
30 pursuant to Ordinances 2014-15, 2015-01, and 2015-02, respectively; and

31 **WHEREAS**, Resolution 2015-05 also updated the Development Review Permit and
32 License Fee Schedule to establish additional fees for permits or reviews which require Town staff
33 and resources; and

34 **WHEREAS**, Resolution 2015-19 updated Development review fee schedule; and

35 **WHEREAS**, Resolution 2016-20 further updated the Development review fee
36 schedule; and

37 **WHEREAS**, Resolution 2016-35 moved the fee schedules from Development to
38 Administration for Special Events, Park Use Permits, Vending, Street Performing, and New Racks,
39 and included in the fee schedule the plazas and pavilion, while also updating when payment of
40 fees or monies are due to the Town; and

41 **WHEREAS**, Resolution 2017-06 updated Fee Schedule related to use of Jarvis Hall, and
42 adopt limitations on the frequency of the use of Jarvis Hall; and

43 **WHEREAS**, pursuant to Section 1-13 of the Lauderdale-By-The-Sea Code of Ordinances,
44 the Town Commission desires to further amend the Fee Schedule for Special Events and Other
45 Use of Public Properties by amending the fees related to Special Events, Park Uses, Street
46 Performers; and

47 **WHEREAS**, the Town Commission finds it to be in the best interest of the Town and its
48 citizens to adopt an updated Fee Schedule for Special Events and Other Use of Public Properties
49 that amends the fees related to Special Events, Park Uses, and Street Performers, and adopts the
50 fees as set forth in this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF
THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. **Recitals.** Each “WHEREAS” clause set forth is true and correct and
incorporated herein by this reference.

Section 2. **Fees.** The Fee Schedule for Special Events and Other Use of Public
Properties, which includes the fees for the use of Jarvis Hall and the Plazas, is hereby amended as
follows ¹:

<u>Special Event, Park Use, and Street Performing Fee Schedule for Special Events and Other Use of Public Properties</u>		
The following is applicable to all <u>special events</u> and <u>other use of public properties</u> park use permits: 1. All applicants must abide by the conditions set forth in their permit, including but not limited to fees, deposits, insurance requirements, solid waste plan, and police, fire or EMS detail. 2. All fees, including any monies owed the Town must be paid before the event or park permit is issued. 3. All estimated fees or costs from Town or BSO shall be paid at least two weeks prior to the event date. Any additional costs incurred will be deducted from the event deposit or is due when invoiced. 4. Depending on the nature and size of the event, a deposit may be required as determined by the Town Manager.		
	Type of Activity, Permit or License	Fee
1. Chapter 14.3 – Parks A Park Permit is required for groups of 25 people plus or when a specific area is reserved. A Park Use Permit may not be approved if submitted within 14 business days of a proposed event. Private event in a park or at the beach where the public is not invited:		
1.1	Single day event, less than 25 people: No reserved area Reservation of a specific area.	No permit required \$100 <u>125</u>
1.3	Single day event, 25 people + with or without reserved area.	\$100 <u>125</u>
1.4	Multi-day event	\$100 <u>125</u> Permit Fee plus an impact

¹ Text shown in underline reflects text or new or revised fees. Text shown in ~~strikethrough~~ reflects deleted text or fee amounts.

Special Event, Park Use, and Street Performing
Fee Schedule for Special Events and Other Use of Public
Properties

1.5	One day event (local or non-local user) that charges admission or registration or sell commercial products or services.	fee set by the Town Manager based on the activity, number of attendees, and impact on the facility
2. Chapter 14.5 - Street Performing		
2.1	Street performing annual permit fee	\$50
3. Chapter 17 - Special Events		
3.1	Special Event Application Fee See also use fees. See 3.2 For events hosted by a businesses with less than 15 employees in the Commercial District along Commercial Boulevard from A1A to West Tradewinds Application filed within 30 days of an event will not be accepted.	
	1. A volunteer event that provides direct benefits to the LBTS community. (examples: beach clean-up, Easter egg hunt, free yoga and meditation, etc.)	-0- (Town Manager may authorize an application to be accepted within 30-days of the event)
	2. Submitted at least 60 days in advance of the proposed event date	<u>\$100</u> <u>125</u>
	3. Submitted between 59 days and 30 days prior to the event PLUS any costs related to special processing of the processing of the application.	<u>\$250</u> <u>275</u> Plus costs, not to exceed \$1,500.
	4. A recurring event within a 6 month period	<u>\$500</u> <u>525</u>
	5. A recurring event within a 12 month period (for example, once a week or once a month).	\$800
	6. An event that has been advertised prior to Commission approval.	\$250 in additional to the application fee
	7. Semi-public business events that use private or public property with less than 50 people at any one time.	<u>\$50</u> <u>75</u> Event may be approved by the Town Manager
	8. Events (local and non-local user)that charges admission or registration or sell commercial products or services	Set by the Town Manager based on purpose, number of attendees, and impact on the facility
3.2	Special Event Application Fee for West Commercial Business District Commercial District events may be approved by the Town Manager if the event is consistent with the Commission's policy direction on special events and meets the following criteria:	

Special Event, Park Use, and Street Performing
Fee Schedule for Special Events and Other Use of Public
Properties

1. Less than 75 people at any time 2. 2. Located along Commercial Boulevard from Seagrape to West Tradewinds The \$2550 electrical use fee will be waived for usage of one 20-amp outlet at event Application filed within 30 days of an event will not be accepted.	
1. Submitted at least 60 days in advance of the proposed event date	\$2025
2. Submitted between 59 days and 30 days prior to the event PLUS any costs related to special processing of the processing of the application.	\$5060 Plus costs, not to exceed \$1,500.
3. A recurring event within a 12 month period (for example, once a week or once a month).	\$15 per event day
4. An event that has been advertised prior to Commission approval.	\$250 in additional to the application fee
5. Events that charges admission or registration or sell commercial products or services	Set by the Town Manager based on purpose, number of attendees, and impact on the area.

60

3.3	Special Event Use Fees for Road Closures and El Mar Median Lane Parking The following use fees are in addition to the Special Event Application Fee, but may be modified or waived by the Town Commission upon a finding that the applicable event will provide a public benefit.	
	Event Conditions:	Road Closure El Mar Median Lane Parking
	1. Private or public business events that use public property with less than 50 people at any one time.	N/A N/A
	2. Less than 100 people	\$100125 per day N/A
	3. 101 - 200 people	\$200225 per day \$250275
	4. More than 200 people	Set by Commission based on purpose, number of attendees, and impact
	5. Events (local or non-local user) that charges admission or registration or sell commercial products or services	Set by Commission based on purpose, number of attendees, and impact.

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4. Chapter 17 - Jarvis Hall

User	Deposit	Rental Fee	Rental Policy (1) (2)
4.1. LBTS Resident (household)	\$100	\$-0-	Limit of 4 rentals in a twelve month period.
4.2. LBTS civic association, charity, community group, or non-profit organization.	\$100	\$-0-	Limit of 16 rentals in a twelve month period, which normally will be one per month plus special events.
4.3. LBTS Business	\$100	\$-0-	Limit of 3 rentals in a twelve month period.
4.4. Governmental entity or agency	\$-0-	\$-0-	As approved by the Town Manager
4.5. Out-of-Town charitable or non-profit	\$-0-	\$100 per day	Limit of 3 rentals in a twelve month period.
4.6. Non-Resident	\$300	\$200 for up to 3 hours, then \$50 per hour	Limit of 3 rentals in a twelve month period.
4.7. Out-of-Town Business	\$300	\$300 for up to 3 hours, then \$50 per hour	Limit of 3 rentals in a twelve month period.
4.8. Additional Service such as special set-ups, opening and closing services outside of business hours, or staffing at event.	Prepaid or charged to deposit	Actual cost determined by the Town Manager.	
4.9 Events (local or non-local user) that charge admission or registration or sell commercial products or services.	TBD	Set by the Town Manager based on purpose, number of attendees, and impact on the facility.	
(1) Each rental or event is limited to 3 consecutive days, which includes move in and move out. Upon the Applicant demonstrating a valid reason, or if required by the Town, the Town Manager may approve minor logistical changes, including but not limited to additional time for set-up and breakdown of events, that are consistent with the Town Code and the Town Commission’s policy direction on the use of Jarvis Hall.			
(2) A rental application denied by the Town Manager may be appealed to the Town Commission.			

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5. Use of the Dunes Plaza, Connie Hoffmann Plaza or Beach Pavilion Plaza

General philosophy: The Dunes Plaza, Connie Hoffmann Plaza and Beach Pavilion (“**The Plazas**”) are the premier public spaces in Town and were built for the enjoyment of our residents and visitors. They are available for events that are open to the general public or are of significant benefit to the Town. The Use Fees are set so the users bear the costs related to their events, rather than the Town subsidizing those events.

Generally, The Plazas will not be rented for events that are not open to the general public, although it is understood that there may be uses that require an admission fee or cost to the public.

The Town Commission may authorize the private use of one or more plaza by a user for an event that is deemed to be of significant benefit to the Town. (Example: a party hosted by the Town and the Convention & Visitors’ Bureau whose purpose is to showcase the Town to visiting travel agents or dignitaries).

Potential use on holidays.

- a. The Town Commission will decide in advance if they will make a plaza available for use by a Town commercial businesses or Town-based non-profit organizations on specific holidays.
- b. On those holidays the Commission designates, the Town will accept proposals for use six months in advance of the holiday and determine which proposals best fit the image and goals of the Town. After the Commission ranks the proposals in preferred order, staff will negotiate rental fees with the first ranked proposer and bring them back to the Commission for approval.
- c. The same business or non-profit organization may not rent the same space on a specific holiday two years in a row if another business or non-profit wants the opportunity. The Town Manager will determine whether others are interested in the opportunity, based on whether she or he has received written notice of such interest from an eligible business or organization no later than seven months prior to the holiday.

Use on the same day as a special event. Rentals will not be considered on days or evenings of Special Events if the Town Manager determines that a conflict would occur.

Sales. There will be no sales during an event except for 1) food products provided to the attendees, 2) items sold at a charity event, or, 3) hand-made artisan products.

Cancellation: The Town Commission reserves the right to cancel the rental up to 90 days in advance.

The following use fees apply, but may be modified or waived by the Town Commission upon a finding that the applicable event will provide a public benefit.

5.1	Advanced Advertising. An event that was advertised prior to receiving Commission approval	\$500 plus the application fee and use fee(s).
5.2	Plaza Event Application Fee (does not include Use Fee(s))	\$100 if filed at least 60 days in advance of the proposed event date. \$250 if submitted between 59 days and 30 days prior to the event AND any cost recovery fees for the costs for Town staff (including police and fire services) and any consultant time attributable to the processing of the application, not to exceed \$1,500.

Plaza Use Fees Are in addition to the Event Application Fees listed above. The use fee is per plaza. If an organization wants to utilize more than one plaza for their event, they must pay for each space. Use of the plazas as part of a larger special event are subject to the plaza use fees, in addition to the any other Special Event Use Fee, but may be waived or modified by the Town Commission upon a finding that the applicable event will provide a public benefit. Application filed within 30 days of an event date will not be accepted. A Deposit may be required and will be set by the Town Manager based on purpose, number of attendees, and impact on the facility.		
5.3	LBTS businesses (limited to 4 rentals per year per business)	\$850 per day per plaza
5.4	LBTS-based charity or non-profit organization (limited to 2 rentals per year per organization)	\$215 per day per plaza
5.5	Out-of-Town 501C Registered Non-Profit or Tax Exempt Organization (limited to 1 rental per organization per year)	\$425 per day per plaza

Section 3. Conflict. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. If any clause, section or other part of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and shall in no way affect the validity of the other provisions of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its passage. The increased fees set forth herein related to Special Events, Park Uses, and Street Performers shall apply to all new requests submitted after the passage and adoption of this Resolution.

PASSED AND ADOPTED this 27th day of August 2024.



Mayor Edmund Malkoon

Attest:

APPROVED AS TO FORM:

83 *Katrina Adler*
84 Town Clerk, Katrina Adler
85
86
87 (CORPORATE SEAL)

Susan L. Trevarthen
Susan L. Trevarthen, Town Attorney





TOWN OF LAUDERDALE-BY-THE-SEA SPECIAL EVENT PERMIT

PERMIT HOLDER INFORMATION

NAME / ORGANIZATION:	St. Demetrios Greek Orthodox Church	REPRESENTATIVE:	Fr. Peter Zougras
STREET ADDRESS:	820 NE 14h Avenue	CITY, STATE, ZIP:	Fort Lauderdale, FL 33304
PHONE NUMBER (S):	954-467-1515	EMAIL:	frzougras@stdemetrios.org

DATE AND LOCATION OF EVENT

TYPE OF EVENT:	Ceremony	DATE(S) OF EVENT:	Monday, January 6, 2025
HOUR(S) OF EVENT:	9:00 AM – 2:00 PM	ADDRESS / LOCATION OF EVENT:	0 Commercial Boulevard, LBTS, FL 33308

DESCRIPTION OF EVENT:

Ceremony

FEAST OF THE HOLY EPIPHANY MONDAY, JANUARY 6, 2025	
Set Up Begins	8:00 AM
Event Start	9:00 AM
Event Ends	2:00 PM
Cleanup Completed	3:00 PM

SPECIAL CONDITIONS

The EVENT was approved by Town Commission on November 12, 2024 with the following conditions:

1. All applicable fees pertaining to this event have been waived – Plaza Event Application Fee (\$100), Out of Town Non-Profit Beach Pavilion Plaza Use Fee (\$425), Out of Town Non-Profit Connie Hoffmann Plaza Use Fee (\$425)– Total \$950.00
2. Marine Turtle Protection: If any of the activities take place on the beach sand, the Event organizers shall ensure a minimum buffer of 10 feet is kept clear around any marked sea turtle nests, or any areas that appear to be a new nest. All proposed event activities will stay clear of all active nests. No activities adjacent to a nest that might directly or indirectly disturb the area within the staked circle. No holes are to be dug in the sand west of the high tide line.



TOWN OF LAUDERDALE-BY-THE-SEA SPECIAL EVENT PERMIT

3. Road Closures, Lane Closures, and Parking Spaces:
 - a. Parking will operate according to normal parking regulations.
4. Setup:
 - a. Tables, chairs, stage, equipment, etc. shall not interfere with pedestrian walkways, ingress or egress.
 - b. Sidewalks next to the Event site and within the Event shall remain open and clear for pedestrian traffic.
 - c. The Event shall be organized in a safe manner to protect attendees. All electric cords and similar material shall be covered to not pose a hazard to the public or event staff.
 - d. Town Staff will bag the beach showers directly East of the plazas prior to the event start.
5. Broward Sherriff Office (BSO):
 - a. BSO shall specify the number of detail officers needed for traffic and crowd control. The Permit Holder shall contract with BSO directly for the necessary BSO personnel within ten (10) days of receiving event approval.
 - b. BSO shall approve the Event's traffic plan, if one is required.
6. Signage
 - a. Permit Holder is permitted to place directional signs at the Plaza designating the event site.
7. The Event and its approved sound systems will be operated so as not to violate the Town's code, including section 13-6, Noise Limitation.
8. A clean up deposit may be imposed, based on the final Site Plan, and due two weeks prior to the Event. Clean up fee starting at \$150 will be charged if the area is not cleaned to the Town's standards by 9:00 a.m. the day of the Event.
9. Final Site Plan must be presented to Town Staff for approval at least 48 hours in advance of the Event. The Permit Holder shall arrange for an inspection of the event site to occur two hours before the start of the event. This inspection shall include Town's Event Manager or designee, and the Event's dedicated on-site representative for the purpose of ensuring the event is organized in a safe manner.
10. The cost of any inspections or work required by Town Staff after normal working hours will be billed to the Event and must be paid within two weeks of invoice date.



TOWN OF LAUDERDALE-BY-THE-SEA SPECIAL EVENT PERMIT

11. Insurance:

- a. At least thirty (30) days prior to the Event, the Permit Holder shall provide a Certificate of Liability written in comprehensive form naming the Town as additional insured in the amount of:
 - \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury; and
 - \$1,000,000 per occurrence and \$2,000,000 general aggregate for property damage with thirty (30) days written notice for cancellation
- b. No required policy shall have a deductible or self-insurance retention greater than \$15,000
- c. All policies must be issued by companies authorized to do business in the State of Florida and rated A- or better per Best's Key Rating Guide, latest edition. The certification of insurance will provide for the Town to receive 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided, unless the insurance company refuses to provide such notice, as evidenced by affidavit of the policy holder or written documentation from the insurance company. In any event, the EVENT will be held responsible for providing the Town notice of any change in insurance coverage. The Town shall be named as an additional insured on all required insurance policies, and an endorsement reflecting this requirement will be issued as part of any required policies. Failure to comply with these requirements will justify a denial, suspension or revocation of the requested approval by the Interim Town Manager or designee.

12. In the event that control of any applicable event or activity, by contract or other arrangement, becomes the responsibility of a party other than the Event (the "Subcontractor"), the Subcontractor shall be required to meet the insurance and indemnification requirements of set forth in the Permit and this Approval, under which the EVENT is applying, as if they were the Event and will be held responsible for compliance with the Town Code as if the Subcontractor for the Event.
13. In the event that insurance certificates, licenses and other material requirements are not provided by the required dates, the approval for the Event shall expire unless the Town Manager finds there are extenuating circumstances that the Event sponsors have cured or can immediately cure without compromising the health, welfare and safety of the citizens of the Town of Lauderdale-By-The-Sea and those attending the Event, without increasing the administration costs of the Town.
14. The Event shall owe no monies to the Town at the time of the event or have any code citations or violations. There shall be no code violations or monies due such as fines, fees, taxes or other charges, permits or licenses outstanding or owed to the Town by the current or past property owners or operators of the Event unless all monies due are paid, permits/paperwork received, and code issues resolved 14 days prior to the Event.
15. The Town Manager may suspend permission for this event or require changes in the site plan due to conflicting activities, failure of the Event to comply with the terms and conditions of the Town's event permit, for health or safety issues, or for the best interests of the Town.



TOWN OF LAUDERDALE-BY-THE-SEA SPECIAL EVENT PERMIT

16. The Town Manager may approve minor logistical changes that are consistent with the Commission's policy direction on special events if deemed necessary by the Town or upon the EVENT proposing a valid reason.
17. Permission for the Event may be suspended or modified by the Commission, Town Manager, or designated Staff.
18. The Town Manager or onsite Town representative may terminate the Event or Event's participation due to the Event not complying with the terms and conditions of the Town's event permit, for health or other safety reasons.
19. If any Condition is not met by the EVENT, the Town may charge a \$500 fee for each occurrence of a violation of these Conditions.

DOCUMENTS AND PERMITS REQUIRED

Insurance Needed.

SIGNATURES REQUIRED

PERMIT HOLDER: I agree to comply with all conditions of this permit	
SIGNATURE OF PERMIT HOLDER:	DATE:
 FATHER PETER ZOUGRAS PRINTED NAME	

TOWN REPRESENTATIVE:	
SIGNATURE:	DATE:
 KATIE ANDERSON, EVENTS & MARKETING MANAGER PRINTED NAME & AFFILIATION TO EVENT	

TOWN REPRESENTATIVE:	
SIGNATURE:	DATE:
 COURTNEY EASLEY, ASSISTANT TO TOWN MANAGER PRINTED NAME & AFFILIATION TO EVENT	



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Courtney Easley, Assistant to Town Manager

Submitting Department: Administration

Item Type: Resolution

Agenda Section: RESOLUTIONS – PUBLIC COMMENTS

Subject Title: RESOLUTION 2024-49 - A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A NON-EXCLUSIVE REVOCABLE LICENSE AGREEMENT WITH THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE, INC. FOR THE USE OF THE TOWN FACILITY LOCATED AT 4201 NORTH OCEAN DRIVE; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Explanation: The Town and Lauderdale-By-The-Sea Chamber of Commerce (the “Chamber”) currently have an agreement for the Chamber to utilize the Town’s Visitor Center Facility (the “Facility”) located at 4201 North Ocean Drive for its own business. The current agreement expires on December 19, 2024 and the Commission appointed Commissioner Richard DeNapoli to negotiate terms for the new agreement with the Chamber (**Current Agreement, Exhibit 2**).

The proposed License Agreement (**Exhibit 3**) contemplates a three-year term with two one-year renewal options (the “License Agreement”) and allows for the Chamber’s continued use of the Facility through a revocable, non-exclusive license for the Chamber’s general office use of a portion of the Facility weekly. The License Agreement also allows for the Facility’s use for monthly Chamber meetings. The start date of the License Agreement and three-year term would commence December 20, 2024.

The License Agreement provides for the Chamber’s ability to use a portion of the Facility for Chamber business subject to the following terms and conditions:

Current Agreement	New Revocable License Agreement	Comments
The Chamber shall remain in good standing as a Florida non-profit during the term of the Agreement.	The Chamber remain in good standing as non-profit and comply with Florida Statutes 501.973 during the term of the agreement	Both parties agree
Termination: Either party may terminate agreement for	Either party may terminate the License Agreement for convenience	Both parties agree

convenience with 120 prior written notice	with 30 days prior written notice. Town may revoke the License Agreement immediately upon non-compliance with terms and conditions.	
Chambers shall partner with the Town for two Town-sponsored events: Boo- By-The-Sea and the Farmers Market	Chamber will partner with Town for one Town-sponsored event, Boo-By- The-Sea.	Both parties agree
Insurance: Commercial General Liability no less than \$1,000,000.00	Workers Compensation and Employer's Liability insurance no less than \$1,000,000 each accident	Both parties agree
	Business Automobile Liability with minimum limits of \$1,000,000 per occurrence Certificate of Insurance shall be provided to the Town reflecting the Town as additionally Insured within 10 days of execution of agreement Commercial General Liability remains the same.	
Political Activities: N/A	The Chamber shall not engage in political activities or solicit participation of others on or at the Facility.	Both parties agree
License Fee: N/A	The Town proposes assessing an annual license fee for non-exclusive use of the Facility	See comments below

Proposed License Fee

There are several not-for-profit organizations, HOA's and Civic Associations based in Lauderdale-By-The-Sea that have used Jarvis Hall to conduct monthly or quarterly meetings free of charge. The groups include the LBTS Garden Club (also has a storage closet), Womens Club, Bel-Air Civic Association, Leisure By The Sea North and Sky230. Additionally, the Lodging Association conducts its meetings in the Town Hall Conference Room at no charge. Each group is required to sign an indemnity and Hold Harmless Agreement to utilize the Town facility.

The difference between these groups and the LBTS Chamber is that the Chamber historically utilized the Visitor Center building at their discretion and they currently have exclusive use of the

building every Wednesday. The Chamber has a dedicated desk area and storage area at the site. In addition, they use the building as their permanent address and have a wall sign on the building and a monument sign on the property. Due to these differences, the proposed agreement includes a \$600 per month charge for general office use and the exclusive use of the Facility on Wednesdays. This rate is comparable to co-working spaces of similar size with permanent storage in the Fort Lauderdale/Pompano metropolitan area. This license fee would include costs for electricity, water and sewer, janitorial, and trash debris collection.

The Chamber collects dues and has one administrative employee; however, they have indicated their revenues only cover operational costs and that they cannot afford the Town's proposal to collect \$600 monthly for the space. Therefore, we have developed additional options for the Commission's potential consideration.

Options

The following options are presented for consideration by the Commission regarding the Chamber's payment of a license fee and use of the Facility:

1- Market-based license fee. As proposed in the License Agreement and recommended for approval based on the input of the Commission liaison, the Town may consider charging the Chamber a license fee of \$600 per month for weekly general office use and to conduct monthly Chamber meetings at the Facility, to include costs for electricity, water and sewer, janitorial, and trash debris collection.

#2 – Reduced license fee. The Chamber proposes a \$250 annual license fee. This fee is consistent with the Town's business tax receipt charge for an office building of similar size. The Chamber would pay any additional utility and service costs incurred and associated with the use of the Facility, including electricity, water and sewer, janitorial, and trash debris collection.

#3 – No license fee. The Town may approve the License Agreement with no license fee. The Chamber would pay any additional utility and service costs incurred and associated with the use of the Facility, including electricity, water and sewer, janitorial, and trash debris collection.

#4 – End the Chamber's use of the Visitor Center. The Town may allow the Current Agreement to expire in December, or extend it temporarily for three months to allow the Chamber time to relocate. The Chamber sign would be removed from the Facility.

Recommendation:

Approval of Resolution 2024-49, approving a new License Agreement with the Lauderdale-By-The Sea Chamber of Commerce to use the 4201 North Ocean Drive Facility for monthly meetings and weekly operational needs, and retain the Chamber sign. Alternatively, the Commission may consider the other options as presented in the memorandum.

Exhibits:

- Ex.1 – Resolution 2024-49
- Ex. 2 – Current Agreement
- Ex. 3 – Proposed License Agreement
- Ex. 4 – Certificate of Insurance
- Ex. 5 – Sunbiz Filing Information

Recommendation: Consider the attached License Agreement and provide direction to staff regarding proposed fee.

Exhibits:

1. Resolution 2024-49 Chamber of Commerce
2. AG 2021-39 Chamber of Commerce
3. Chamber License Agreement
4. Certificate of Insurance
5. SunBiz - Filing Information_ACTIVE

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A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A NON-EXCLUSIVE REVOCABLE LICENSE AGREEMENT WITH THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE, INC. FOR THE USE OF THE TOWN FACILITY LOCATED AT 4201 NORTH OCEAN DRIVE; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea (the “Town”) owns and operates a property used as a tourist information center (the “Visitor Center”) located at 4201 North Ocean Drive (the “Facility”); and

WHEREAS, the Lauderdale-By-The-Sea Chamber of Commerce, Inc. (the “Chamber”) desires to use a portion of the Facility for the Chamber’s once monthly meetings and weekly operational needs; and

WHEREAS, in exchange for the ability to use the Facility, the Chamber agrees to partner with the Town for two Town-sponsored events and aid in the promotion of all Town-sponsored events by posting on their website and including information in printed materials, emails, and e-newsletters; and

WHEREAS, the Chamber and Town staff have negotiated a non-exclusive revocable license agreement for the Chamber’s use of a portion of the Facility (the “Agreement”) for a term of three years, with two one-year renewal options (the “Term”); and

WHEREAS, the Town Commission desires to approve the Agreement with the Chamber in substantially the form attached hereto as Exhibit “A”; and

WHEREAS, the Town Commission deems it to be in the best interest of the Town and its residents to approve, and authorize the Town Manager to execute, the Agreement with the Chamber for use of the Facility.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:

Section 1. Recitals. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and incorporated herein by this reference.

Section 2. Agreement Approved. The Town Commission hereby approves the Agreement with the Chamber in substantially the form attached hereto as Exhibit “A” for use of the Facility.

Section 3. Authorization to Execute the Agreement. The Town Manager is hereby authorized to execute the Agreement with the Chamber, attached as Exhibit “A,” together with such non-substantial changes as are deemed necessary by the Town Manager and approved as to form and legal sufficiency by the Town Attorney.

Section 4. Authorization to Implement. The appropriate Town officials are authorized to execute all necessary documents and to take any necessary action to effectuate the intent of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon passage and adoption.

PASSED AND ADOPTED on this 12th day of November, 2024.

MAYOR EDMUND MALKOON

Attest:

Katrina Adler, Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

**REVOCABLE LICENSE AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA AND
THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE**

THIS REVOCABLE LICENSE AGREEMENT (this “Agreement”) is made this __ day of _____ 2024 (“Effective Date”) by and between the Town of Lauderdale-By-The-Sea, Florida, a municipal corporation organized and operating under the laws of the State of Florida (the “TOWN”), and the Lauderdale-By-The-Sea Chamber of Commerce, Inc., a non-profit corporation authorized to do business in the State of Florida (the “CHAMBER”).

RECITALS

WHEREAS, the TOWN owns and operates a property used as a tourist information center (the “Visitor Center”) located at 4201 Ocean Drive, Lauderdale-By-The-Sea (the “Facility”, as depicted in Exhibit “A”) for the primary purpose of promoting commerce and tourism within Lauderdale-By-The-Sea; and

WHEREAS, the CHAMBER desires, and the TOWN agrees to grant the CHAMBER a non-exclusive revocable license to use a portion of the Facility, as more particularly described or depicted on Exhibit “A” attached hereto, for CHAMBER meetings and general office use, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, terms, provisions, covenants and payments set forth herein, it is hereby agreed by and between TOWN and CHAMBER as follows:

1. **Recitals** The above recitals are true and correct and are hereby incorporated herein.

2. **Term and Termination**

- 2.1 This Agreement shall be in effect for three years beginning on _____, 2024 and ending on _____, 2027 (the “Term”), unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 2.2 At the end of the Term, the TOWN shall have the option to renew this Agreement for two (2) periods of one (1) year each (each, a “Renewal Term”) by providing 30 days’ written notice, upon terms and conditions acceptable to the Parties.
- 2.3 Either party may terminate this Agreement for convenience with 30 days’ prior written notice to the other party. The TOWN may terminate and revoke this Agreement immediately in the event that the CHAMBER is not in compliance with the terms and conditions of this Agreement.

3. **Grant of License; License Fee and Costs; Services and Responsibilities of CHAMBER.**

- 3.1 **Grant of License.** The TOWN grants to the CHAMBER a revocable, nonexclusive license to use a portion of the Facility depicted on Exhibit “A” only for the purposes of (i) general office space for CHAMBER business during normal business hours,

for functions such as processing payments, filings, and answering phone calls and emails; (ii) use of the Facility every Wednesday of the month for its Board meetings, or as may otherwise be scheduled with the written approval of the Town Manager or designee; and (iii) CHAMBER events may be held at the Facility, if approved in writing by the Town Manager or designee. This Agreement may not be assigned or transferred by CHAMBER to any party and is authorized only for the purposes set forth herein. CHAMBER shall not permit the Facility to be occupied or utilized by other organizations, entities, or persons. This Agreement is not a lease or an easement and is not intended and shall not be construed to transfer or grant any interest in the real property of the TOWN or the Facility to CHAMBER.

- 3.2 License Fees; Costs. The CHAMBER shall pay the TOWN an annual license fee in the amount of Seven Thousand Two Hundred Dollars (\$7,200.00), plus any applicable sales tax, payable in monthly installments of Six Hundred Dollars (\$600.00). License fee payments shall be due no later than the first of every month following the Agreement date. The CHAMBER shall pay the license fee to Town of Lauderdale-By-The-Sea at 4501 North Ocean Drive Lauderdale-By-The Sea Florida 33308. Any monthly license fee payment not received within ten (10) days of the due date will be assessed a late charge of Twenty-Five Dollars (\$25). The \$25 shall be added to the first day late, plus an additional Five Dollars (\$5) per day for each day thereafter until payment is received. Any unpaid late charges due under this paragraph shall be added and become due with the next monthly license fee payment. Non-payment or ten (10) instances of late payment is a default under this Agreement. The TOWN may require that the CHAMBER pay any utility and service costs associated with its use of the Facility, including electricity, water and sewer, janitorial, and trash and debris collection.
- 3.3 As-Is Condition of Facility, Release. The TOWN makes the Facility available to the CHAMBER for its use in “As-Is” condition, and makes no representations or warranties concerning the condition of the Facility or its suitability for use by the CHAMBER, its agents, employees, invitees, volunteers and guests, and assumes no duty to warn either CHAMBER, its agents, employees, invitees, volunteers and guests, concerning the condition of the Facility that exists as of the date of this Agreement or may arise in the future. TOWN shall have no liability to the CHAMBER, its agents, employees, invitees, volunteers and guests, in connection with the Facility, this Agreement and the subject matter hereof, including, without limitation, any claims in connection with, related to, or arising from the Facility or the TOWN’S ownership or maintenance of the Facility.
- 3.4 The CHAMBER shall remain in good standing as a Florida non-profit corporation and comply with Florida Statutes 501.973 during the term of this Agreement.
- 3.5 The CHAMBER agrees to participate with the TOWN in TOWN special events, including TOWN’S Boo-By-The-Sea event. These events may be changed upon

mutual agreement of the parties. The CHAMBER'S participation in TOWN events shall consist of assisting the TOWN in the organization and execution of the events, and other responsibilities, as determined and directed by the TOWN.

3.6 The CHAMBER shall aid in the promotion of all TOWN-sponsored events by posting on the CHAMBER'S website and by including information in printed materials, emails, and e-newsletters.

3.7 The CHAMBER shall not engage in political activities or solicit participation of others in political activities on or at the Facility. CHAMBER shall comply with Section 106.15(4), Florida Statutes, and shall not make, solicit or knowingly accept any political contribution on or at the Facility.

4. Services and Responsibilities of the TOWN

4.1 The TOWN agrees to provide non-exclusive use of the Facility during the Term for the benefit of CHAMBER, subject to the terms and conditions of this Agreement. The Facility shall remain at all times the property of TOWN. The CHAMBER may use the Facility only as general office space for CHAMBER business during normal business hours, for functions such as processing payments, filings, and answering phone calls and emails.

4.2 The CHAMBER will be allowed to have exclusive use of the Facility every Wednesday of the month for its Board meetings, or as may otherwise be scheduled with the written approval of the Town Manager or designee. Additional CHAMBER events may be held at the Facility if approved in writing by the Town Manager or designee. The CHAMBER'S use of the Facility shall be non-exclusive and incidental to, and shall not interfere with, the TOWN'S primary use and ownership of the Facility.

4.3 TOWN and CHAMBER agree to cooperate in each other's efforts to positively promote the TOWN and host events intended to bring visitors to the TOWN and residents to the downtown area.

5. Equal Employment Opportunity

In the performance of this Agreement, the CHAMBER shall not discriminate against any firm, employee, or applicant for employment or any other firm/individual in providing services on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

6. Notice

Whenever any party desires to give notice unto any other party hereunder, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CHAMBER and TOWN designate as the respective places for giving of notice:

TOWN: Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Fax: 954-640-4204

CHAMBER: President
Lauderdale-By-The-Sea Chamber of Commerce
4201 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Fax: 954-769-1560

7. **Property**

The parties agree that all items, equipment, property and materials owned or purchased by CHAMBER shall forever remain the property of CHAMBER. The parties further agree that all items, equipment, property and materials owned or purchased by TOWN shall forever remain the property of TOWN. In the event of damage or destruction to the other party's property, the party causing such damage or destruction shall promptly repair or replace the damaged or destroyed property.

8. **Waiver**

Failure of either party to insist upon strict performance of any covenant or condition of this Agreement or to execute any right herein contained shall not be construed as a waiver or relinquishment for the future of any such covenant condition or right, but the same shall remain in full force and effect.

9. **Severability**

If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

10. **Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Broward County, Florida.

11. **Extent of Agreement**

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

12. **Indemnification**

CHAMBER shall defend, indemnify, and hold harmless the TOWN, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, whether directly or indirectly, or any way connected with CHAMBER performance or non-performance of any provision of this Agreement, including, but not limited to, the use of the Facility by it, and its agents, employees, invitees, volunteers and guests, any employment related issues involving the CHAMBER as a result of this Agreement, liabilities arising from contracts between the CHAMBER and third parties for work or materials required under or related to this Agreement. CHAMBER shall reimburse the TOWN for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, whether directly or indirectly, or in any way connected with CHAMBER'S performance or non-performance of this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN'S sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this section shall survive termination of this Agreement.

13. **Insurance.**

13.1 CHAMBER shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to TOWN, naming the TOWN as an Additional Insured, underwritten by a firm rated B + or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the TOWN, its officials, employees, agents, invitees and volunteers, naming the TOWN as additional insured. Any insurance maintained by the TOWN shall be in excess of the CHAMBER'S insurance and shall not contribute to the CHAMBER'S insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the TOWN as it deems necessary or prudent.

13.1.1 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CHAMBER. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

13.1.2 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CHAMBER shall be allowed to use the Facility pursuant to this Agreement who is not covered by Worker's Compensation insurance.

13.1.3 Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage.

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

13.2 **Certificate of Insurance.** Certificates of Insurance shall be provided to the TOWN reflecting the TOWN as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days prior to the execution of this Agreement by TOWN and prior to use of the Facility. Each certificate shall include no less than (30) thirty-day advance written notice to TOWN prior to cancellation, termination, or material alteration of said policies or insurance. The CHAMBER shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the TOWN. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The TOWN reserves the right to inspect and return a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the term of this Agreement, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the TOWN.

13.3 **Additional Insured.** Except with respect to Worker's Compensation Insurance, the TOWN is to be specifically included as an Additional Insured for the liability of the TOWN resulting from this Agreement. The CHAMBER'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to the CHAMBER'S insurance. The CHAMBER'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

13.4 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the TOWN. The CHAMBER shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

13.5 The provisions of this section shall survive termination of this Agreement.

14. **Ethics; Compliance with Laws.**

14.1 CHAMBER warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

14.2 No officer or employee of the TOWN, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this contract

or the proceeds thereof. Any subcontractors hired by the CHAMBER must also adhere to this policy and it must be included in their contracts as well.

14.3 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner.

14.4 CHAMBER covenants to promptly comply with all applicable federal, state, county, and municipal laws, ordinances, regulations, and rules relating to this Agreement and in effect at the time of performance. CHAMBER covenants that it will conduct no activity or provide any service that is unlawful or offensive.

15. Attorney's Fees and Waiver of Jury Trial.

15.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and all appellate levels.

15.2 IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

16. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

17. Noncoercive Conduct Affidavit.

Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the Contractor acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

TOWN:

TOWN OF LAUDERDALE-BY-THE-SEA

By: _____
Linda Connors, Town Manager

Date: _____

Attest: _____
Katrina Adler, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney Susan L. Trevarthen

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me **by means of** ____ **physical presence or** ____ **online notarization**, this ____ day of _____, 2024, by Linda Connors, as Town Manager, of Town of Lauderdale by the Sea. She is personally known ____ or produced _____ as form of identification.

[NOTARY SEAL]

Notary Public for the State of Florida

Name Type, Print or Stamped

My Commission expires: _____

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

CHAMBER:

LAUDERDALE-BY-THE-SEA
CHAMBER OF COMMERCE, INC.

By: _____

Name: _____

Title: Chair of the Board

Date: _____

STATE OF FLORIDA)
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me **by means of** ____ **physical presence or** ____ **online notarization**, this ____ day of _____, 2024, by _____, as _____, of Lauderdale by the Sea Chamber of Commerce, Inc. He/She is personally known ____ or produced _____ as form of identification.

[NOTARY SEAL]

Notary Public for the State of Florida

Name Type, Print or Stamped

My Commission expires: _____

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, **I hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and a governmental entity, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of _____, a nongovernmental entity.
3. _____ does not use coercion for labor or services as defined in the relevant section of the law.

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

(signature)

Print Name: _____

OATH OR AFFIRMATION

State of Florida

County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____
_____(name of person) as _____ (type of authority) for _
_____(name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

EXHIBIT “A”

Description of Facility



Property Search

Search Results

Parcel Result



Homestead



Map



Sketch



Estimator



Portability



Exemption



TRIM



Tax



Pictures



Fraud



AskMarty



Print

Copy Link

New Search

< Prev Parcel

Tax Year 2025 ▼

Next Parcel >

Property Summary**Property ID:** 494318010010**Property Owner(s):** TOWN OF LAUDERDALE BY THE SEA**Mailing Address:** 4501 N OCEAN DR LAUDERDALE BY THE SEA, FL 33308

click here to update mailing address

Physical Address: 4201 N OCEAN DRIVE LAUDERDALE BY THE SEA, 33308

Neighborhood: Silver Shores

Property Use: 82-04 Forest, parks, recreational areas - Municipal

Millage Code: 0211

Adj. Bldg. S.F.: 1762 Card/Permits

**Bldg Under Air
S.F.:**

Effective Year: 1980

Year Built: 1968

Units/Beds/Baths: 0 / /

No Public Picture

[Previous](#) [Next](#)

Deputy Appraiser: Frank Stolar

**Property Appraiser
Number:** 954-357-6835

**Property Appraiser
Email:** commercialtrim@bcpa.net

Abbr. Legal LAUDERDALE BY THE SEA 6-2 B TR DESIGNATED AS PARKS LYING BET BL' 7
Des.: & 29,TOG WITH PARK LYINGS OF BLK 30

If you see a factual error on this page, please click here to notify us.

 Important:

The just values displayed below were set in compliance with Sec. 193.011, Fla. Stat., and include a reduction for costs of sale and other adjustments required by Sec. 193.011(8).

Property Assessment

Year	Land	Building / Improvement	Just/Market Value	Assessed / SOH Value	Tax
2025	\$1,866,630	\$127,170	\$1,993,800	\$1,233,790	
2024	\$1,866,630	\$127,170	\$1,993,800	\$1,121,630	
2023	\$1,866,630	\$127,170	\$1,993,800	\$1,019,670	

Exemptions And Taxing Authority Information

	County	School Board	Municipal	Independent
Just Value	\$1,993,800	\$1,993,800	\$1,993,800	\$1,993,800
Portability	0	0	0	0
Assessed / SOH	\$1,233,790	\$1,993,800	\$1,233,790	\$1,233,790
Homestead	0	0	0	0
Add. Homestead	0	0	0	0
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exemption Type 14	\$1,233,790	\$1,233,790	\$1,233,790	\$1,233,790
Affordable Housing	0	0	0	0
Taxable	0	0	0	0

Sales History For This Parcel

**AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA AND
THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE**

THIS is an AGREEMENT (the "Agreement") made this 20th day of December 2021 by and between the Town of Lauderdale-By-The-Sea, Florida, a municipal corporation organized and operating under the laws of the State of Florida (the "TOWN"), and the Lauderdale-By-The-Sea Chamber of Commerce, Inc., a non-profit corporation authorized to do business in the State of Florida (the "CHAMBER").

RECITALS

WHEREAS, the TOWN owns and operates a tourist information center (the "Visitor Center") at 4201 Ocean Drive, Lauderdale-By-The-Sea (the "Facility") for the primary purpose of promoting commerce and tourism within Lauderdale-By-The-Sea; and

WHEREAS, the CHAMBER desires, and the TOWN agrees to allow the CHAMBER to use the Facility for CHAMBER meetings.

NOW, THEREFORE, in consideration of the mutual promises, terms, provisions, covenants and payments set forth herein, it is hereby agreed by and between TOWN and CHAMBER as follows:

1. **Recitals** The above recitals are true and correct and are hereby incorporated herein.

2. **Term and Termination**

- 2.1 This Agreement shall be in effect for three years beginning on 12-20, 2021 and ending on 12-19, 2024 (the "Term"), unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 2.2 At the end of the Term, the TOWN shall have the option to renew this Agreement for two (2) periods of one (1) year each (each, a "Renewal Term") by providing 30 days' written notice.
- 2.3 Either party may terminate this Agreement for convenience with 120 days' prior written notice to the other party.

3. **Services and Responsibilities of the CHAMBER**

- 3.1 The CHAMBER shall remain in good standing as a Florida non-profit corporation during the term of this Agreement.
- 3.2 The CHAMBER agrees to partner with the TOWN for two TOWN-sponsored events each year, which may include but are not limited to, the Boo-By-The-Sea and the Farmers Market. These events may be changed upon mutual agreement of

the parties. The CHAMBER'S participation in Town events shall consist of assisting the TOWN in the organization and execution of the events, and other responsibilities, as determined and directed by the TOWN.

- 3.3 The CHAMBER shall aid in the promotion of all TOWN-sponsored events by posting on the CHAMBER'S website and by including information in printed materials, emails, and e-newsletters.

4. Services and Responsibilities of the TOWN

- 4.1 The TOWN agrees to provide non-exclusive use of the Facility during the Term for the benefit of CHAMBER, subject to the terms and conditions of this Agreement. The Facility shall remain at all times the property of TOWN. The CHAMBER may use the Facility only as general office space for CHAMBER business during normal business hours, for functions such as processing payments, filings, and answering phone calls and emails.
- 4.2 The CHAMBER will be allowed to have exclusive use the Facility every third Wednesday of the month from 8 am to 12 pm for its Board meetings, or as may otherwise be scheduled with the approval of the Town Manager or designee. Additional CHAMBER events may be held at the Facility if approved by the Town Manager. The CHAMBER'S use of the Facility shall be incidental to, and shall not interfere with, the TOWN'S primary use and ownership of the Facility
- 4.3 Personnel employed or contracted by the TOWN at the Facility may be used by the CHAMBER for CHAMBER-related business, as may be separately agreed to between the CHAMBER and TOWN employee, provided such agreement does not interfere with TOWN business or operations and does not prevent the personnel from meeting their obligations to the Town. .
- 4.4 TOWN and CHAMBER agree to cooperate in each other's efforts to positively promote the Town of Lauderdale-By-The-Sea and host events intended to bring visitors to the Town of Lauderdale-By-The-Sea and residents to the downtown area.
- 4.5 The TOWN agrees to partner with the CHAMBER for the CHAMBER'S Taste-By-The-Sea event, if scheduled, by providing assistance with permits and approvals and providing in-kind public works services.

5. Equal Employment Opportunity

In the performance of this Agreement, the CHAMBER shall not discriminate against any firm, employee, or applicant for employment or any other firm/individual in providing services on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

6. **Notice**

Whenever any party desires to give notice unto any other party hereunder, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CHAMBER and TOWN designate as the respective places for giving of notice:

TOWN: Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Fax: 954-640-4236

CHAMBER: President
Lauderdale-By-The-Sea Chamber of Commerce
4201 Ocean Drive
Lauderdale-By-The-Sea, FL 33308 Fax:
954-769-1560

7. **Property**

The parties agree that all items, equipment, property and materials owned or purchased by CHAMBER shall forever remain the property of CHAMBER. The parties further agree that all items, equipment, property and materials owned or purchased by TOWN shall forever remain the property of TOWN. In the event of damage or destruction to the other party's property, the party causing such damage or destruction shall promptly repair or replace the damaged or destroyed property.

8. **Waiver**

Failure of either party to insist upon strict performance of any covenant or condition of this Agreement or to execute any right herein contained shall not be construed as a waiver or relinquishment for the future of any such covenant condition or right, but the same shall remain in full force and effect.

9. **Severability**

If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

10. **Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Broward County, Florida.

11. **Extent of Agreement**

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

12. **Indemnification**

CHAMBER shall defend, indemnify, and hold harmless the TOWN, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, whether directly or indirectly, or any way connected with CHAMBER performance or non-performance of any provision of this Agreement, including, but not limited to, any employment related issues involving the CHAMBER as a result of this Agreement, liabilities arising from contracts between the CHAMBER and third parties for work or materials required under or related to this Agreement. CHAMBER shall reimburse the TOWN for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, whether directly or indirectly, or in any way connected with CHAMBER'S performance or non-performance of this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN'S sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this section shall survive termination of this Agreement.

13. **Insurance**

CHAMBER shall provide evidence of workers compensation that complies with the insurance laws of the State of Florida. The CHAMBER shall carry commercial general liability insurance in an amount no less than \$1,000,000.00 issued by an insurance company rated B+ or better (A.M. Best rating), together with an endorsement naming the Town as an additional or named insured. Evidence of such required insurance must be provided before any work is commenced under this Agreement and annually thereafter.

14. **Ethics.**

14.1 CHAMBER warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

14.2 No officer or employee of the TOWN, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this contract

or the proceeds thereof. Any subcontractors hired by the CHAMBER must also adhere to this policy and it must be included in their contracts as well.

- 14.3 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner.
- 14.4 CHAMBER covenants to promptly comply with all applicable federal, state, county, and municipal laws, ordinances, regulations, and rules relating to this Agreement and in effect at the time of performance. CHAMBER covenants that it will conduct no activity or provide any service that is unlawful or offensive.

[SIGNATURE PAGE TO FOLLOW]

**AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA AND
THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE**

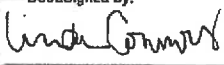
IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

TOWN:

CHAMBER:

TOWN OF LAUDERDALE-BY-THE-SEA

LAUDERDALE-BY-THE-SEA
CHAMBER OF COMMERCE, INC.

DocuSigned by:
By: 
Linda Connors, Town Manager

By: _____
Chair of the Board

Date: 12/20/2021

Date: _____

DocuSigned by:
Attest: 
Tedra Allen, Town Clerk

Approved as to Form and Legal Sufficiency:

DocuSigned by:

Town Attorney Susan L. Trevarthen

**AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA AND
THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE**

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

TOWN:

CHAMBER:

TOWN OF LAUDERDALE-BY-THE-SEA

LAUDERDALE-BY-THE-SEA
CHAMBER OF COMMERCE, INC.

By: _____
Linda Connors, Town Manager

By: _____
Chair of the Board

Date: _____

Date: 11/19/21

Attest: _____
Tedra Allen, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney Susan L. Trevarthen

**REVOCABLE LICENSE AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA AND
THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE**

THIS REVOCABLE LICENSE AGREEMENT (this “Agreement”) is made this __ day of _____ 2024 (“Effective Date”) by and between the Town of Lauderdale-By-The-Sea, Florida, a municipal corporation organized and operating under the laws of the State of Florida (the “TOWN”), and the Lauderdale-By-The-Sea Chamber of Commerce, Inc., a non-profit corporation authorized to do business in the State of Florida (the “CHAMBER”).

RECITALS

WHEREAS, the TOWN owns and operates a property used as a tourist information center (the “Visitor Center”) located at 4201 Ocean Drive, Lauderdale-By-The-Sea (the “Facility”, as depicted in Exhibit “A”) for the primary purpose of promoting commerce and tourism within Lauderdale-By-The-Sea; and

WHEREAS, the CHAMBER desires, and the TOWN agrees to grant the CHAMBER a non-exclusive revocable license to use a portion of the Facility, as more particularly described or depicted on Exhibit “A” attached hereto, for CHAMBER meetings and general office use, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, terms, provisions, covenants and payments set forth herein, it is hereby agreed by and between TOWN and CHAMBER as follows:

1. **Recitals** The above recitals are true and correct and are hereby incorporated herein.

2. **Term and Termination**

- 2.1 This Agreement shall be in effect for three years beginning on _____, 2024 and ending on _____, 2027 (the “Term”), unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 2.2 At the end of the Term, the TOWN shall have the option to renew this Agreement for two (2) periods of one (1) year each (each, a “Renewal Term”) by providing 30 days’ written notice, upon terms and conditions acceptable to the Parties.
- 2.3 Either party may terminate this Agreement for convenience with 30 days’ prior written notice to the other party. The TOWN may terminate and revoke this Agreement immediately in the event that the CHAMBER is not in compliance with the terms and conditions of this Agreement.

3. **Grant of License; License Fee and Costs; Services and Responsibilities of CHAMBER.**

- 3.1 **Grant of License.** The TOWN grants to the CHAMBER a revocable, nonexclusive license to use a portion of the Facility depicted on Exhibit “A” only for the purposes of (i) general office space for CHAMBER business during normal business hours,

for functions such as processing payments, filings, and answering phone calls and emails; (ii) use of the Facility every Wednesday of the month for its Board meetings, or as may otherwise be scheduled with the written approval of the Town Manager or designee; and (iii) CHAMBER events may be held at the Facility, if approved in writing by the Town Manager or designee. This Agreement may not be assigned or transferred by CHAMBER to any party and is authorized only for the purposes set forth herein. CHAMBER shall not permit the Facility to be occupied or utilized by other organizations, entities, or persons. This Agreement is not a lease or an easement and is not intended and shall not be construed to transfer or grant any interest in the real property of the TOWN or the Facility to CHAMBER.

- 3.2 License Fees; Costs. The CHAMBER shall pay the TOWN an annual license fee in the amount of Seven Thousand Two Hundred Dollars (\$7,200.00), plus any applicable sales tax, payable in monthly installments of Six Hundred Dollars (\$600.00). License fee payments shall be due no later than the first of every month following the Agreement date. The CHAMBER shall pay the license fee to Town of Lauderdale-By-The-Sea at 4501 North Ocean Drive Lauderdale-By-The Sea Florida 33308. Any monthly license fee payment not received within ten (10) days of the due date will be assessed a late charge of Twenty-Five Dollars (\$25). The \$25 shall be added to the first day late, plus an additional Five Dollars (\$5) per day for each day thereafter until payment is received. Any unpaid late charges due under this paragraph shall be added and become due with the next monthly license fee payment. Non-payment or ten (10) instances of late payment is a default under this Agreement. The TOWN may require that the CHAMBER pay any utility and service costs associated with its use of the Facility, including electricity, water and sewer, janitorial, and trash and debris collection.
- 3.3 As-Is Condition of Facility, Release. The TOWN makes the Facility available to the CHAMBER for its use in “As-Is” condition, and makes no representations or warranties concerning the condition of the Facility or its suitability for use by the CHAMBER, its agents, employees, invitees, volunteers and guests, and assumes no duty to warn either CHAMBER, its agents, employees, invitees, volunteers and guests, concerning the condition of the Facility that exists as of the date of this Agreement or may arise in the future. TOWN shall have no liability to the CHAMBER, its agents, employees, invitees, volunteers and guests, in connection with the Facility, this Agreement and the subject matter hereof, including, without limitation, any claims in connection with, related to, or arising from the Facility or the TOWN’S ownership or maintenance of the Facility.
- 3.4 The CHAMBER shall remain in good standing as a Florida non-profit corporation and comply with Florida Statutes 501.973 during the term of this Agreement.
- 3.5 The CHAMBER agrees to participate with the TOWN in TOWN special events, including TOWN’S Boo-By-The-Sea event. These events may be changed upon

mutual agreement of the parties. The CHAMBER'S participation in TOWN events shall consist of assisting the TOWN in the organization and execution of the events, and other responsibilities, as determined and directed by the TOWN.

3.6 The CHAMBER shall aid in the promotion of all TOWN-sponsored events by posting on the CHAMBER'S website and by including information in printed materials, emails, and e-newsletters.

3.7 The CHAMBER shall not engage in political activities or solicit participation of others in political activities on or at the Facility. CHAMBER shall comply with Section 106.15(4), Florida Statutes, and shall not make, solicit or knowingly accept any political contribution on or at the Facility.

4. **Services and Responsibilities of the TOWN**

4.1 The TOWN agrees to provide non-exclusive use of the Facility during the Term for the benefit of CHAMBER, subject to the terms and conditions of this Agreement. The Facility shall remain at all times the property of TOWN. The CHAMBER may use the Facility only as general office space for CHAMBER business during normal business hours, for functions such as processing payments, filings, and answering phone calls and emails.

4.2 The CHAMBER will be allowed to have exclusive use of the Facility every Wednesday of the month for its Board meetings, or as may otherwise be scheduled with the written approval of the Town Manager or designee. Additional CHAMBER events may be held at the Facility if approved in writing by the Town Manager or designee. The CHAMBER'S use of the Facility shall be non-exclusive and incidental to, and shall not interfere with, the TOWN'S primary use and ownership of the Facility.

4.3 TOWN and CHAMBER agree to cooperate in each other's efforts to positively promote the TOWN and host events intended to bring visitors to the TOWN and residents to the downtown area.

5. **Equal Employment Opportunity**

In the performance of this Agreement, the CHAMBER shall not discriminate against any firm, employee, or applicant for employment or any other firm/individual in providing services on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

6. **Notice**

Whenever any party desires to give notice unto any other party hereunder, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CHAMBER and TOWN designate as the respective places for giving of notice:

TOWN: Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Fax: 954-640-4204

CHAMBER: President
Lauderdale-By-The-Sea Chamber of Commerce
4201 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Fax: 954-769-1560

7. **Property**

The parties agree that all items, equipment, property and materials owned or purchased by CHAMBER shall forever remain the property of CHAMBER. The parties further agree that all items, equipment, property and materials owned or purchased by TOWN shall forever remain the property of TOWN. In the event of damage or destruction to the other party's property, the party causing such damage or destruction shall promptly repair or replace the damaged or destroyed property.

8. **Waiver**

Failure of either party to insist upon strict performance of any covenant or condition of this Agreement or to execute any right herein contained shall not be construed as a waiver or relinquishment for the future of any such covenant condition or right, but the same shall remain in full force and effect.

9. **Severability**

If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

10. **Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Broward County, Florida.

11. **Extent of Agreement**

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

12. **Indemnification**

CHAMBER shall defend, indemnify, and hold harmless the TOWN, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, whether directly or indirectly, or any way connected with CHAMBER performance or non-performance of any provision of this Agreement, including, but not limited to, the use of the Facility by it, and its agents, employees, invitees, volunteers and guests, any employment related issues involving the CHAMBER as a result of this Agreement, liabilities arising from contracts between the CHAMBER and third parties for work or materials required under or related to this Agreement. CHAMBER shall reimburse the TOWN for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, whether directly or indirectly, or in any way connected with CHAMBER'S performance or non-performance of this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN'S sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this section shall survive termination of this Agreement.

13. **Insurance.**

13.1 CHAMBER shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to TOWN, naming the TOWN as an Additional Insured, underwritten by a firm rated B + or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the TOWN, its officials, employees, agents, invitees and volunteers, naming the TOWN as additional insured. Any insurance maintained by the TOWN shall be in excess of the CHAMBER'S insurance and shall not contribute to the CHAMBER'S insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the TOWN as it deems necessary or prudent.

13.1.1 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CHAMBER. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

13.1.2 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CHAMBER shall be allowed to use the Facility pursuant to this Agreement who is not covered by Worker's Compensation insurance.

13.1.3 Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage.

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

13.2 **Certificate of Insurance.** Certificates of Insurance shall be provided to the TOWN reflecting the TOWN as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days prior to the execution of this Agreement by TOWN and prior to use of the Facility. Each certificate shall include no less than (30) thirty-day advance written notice to TOWN prior to cancellation, termination, or material alteration of said policies or insurance. The CHAMBER shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the TOWN. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The TOWN reserves the right to inspect and return a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the term of this Agreement, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the TOWN.

13.3 **Additional Insured.** Except with respect to Worker's Compensation Insurance, the TOWN is to be specifically included as an Additional Insured for the liability of the TOWN resulting from this Agreement. The CHAMBER'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to the CHAMBER'S insurance. The CHAMBER'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

13.4 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the TOWN. The CHAMBER shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

13.5 The provisions of this section shall survive termination of this Agreement.

14. **Ethics; Compliance with Laws.**

14.1 CHAMBER warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

14.2 No officer or employee of the TOWN, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this contract

or the proceeds thereof. Any subcontractors hired by the CHAMBER must also adhere to this policy and it must be included in their contracts as well.

14.3 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner.

14.4 CHAMBER covenants to promptly comply with all applicable federal, state, county, and municipal laws, ordinances, regulations, and rules relating to this Agreement and in effect at the time of performance. CHAMBER covenants that it will conduct no activity or provide any service that is unlawful or offensive.

15. Attorney's Fees and Waiver of Jury Trial.

15.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and all appellate levels.

15.2 IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

16. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

17. Noncoercive Conduct Affidavit.

Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the Contractor acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

TOWN:

TOWN OF LAUDERDALE-BY-THE-SEA

By: _____
Linda Connors, Town Manager

Date: _____

Attest: _____
Katrina Adler, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney Susan L. Trevarthen

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me **by means of ____ physical presence or ____ online notarization**, this ____ day of _____, 2024, by Linda Connors, as Town Manager, of Town of Lauderdale by the Sea. She is personally known ____ or produced _____ as form of identification.

[NOTARY SEAL]

Notary Public for the State of Florida

Name Type, Print or Stamped

My Commission expires: _____

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

CHAMBER:

LAUDERDALE-BY-THE-SEA
CHAMBER OF COMMERCE, INC.

By: _____

Name: _____

Title: Chair of the Board

Date: _____

STATE OF FLORIDA)
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me **by means of** ____ **physical presence or** ____ **online notarization**, this ____ day of _____, 2024, by _____, as _____, of Lauderdale by the Sea Chamber of Commerce, Inc. He/She is personally known ____ or produced _____ as form of identification.

[NOTARY SEAL]

Notary Public for the State of Florida

Name Type, Print or Stamped

My Commission expires: _____

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, **I hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and a governmental entity, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of _____, a nongovernmental entity.
3. _____ does not use coercion for labor or services as defined in the relevant section of the law.

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

(signature)

Print Name: _____

OATH OR AFFIRMATION

State of Florida

County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____
_____(name of person) as _____ (type of authority) for _
_____(name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

EXHIBIT “A”

Description of Facility



LAUDCHA-01

AMEDINA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/15/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Loomis Company - PCF 2929 E Commercial Blvd., Suite 702 Fort Lauderdale, FL 33308	CONTACT NAME: Heather Roach	
	PHONE (A/C, No, Ext): (954) 772-0448 2141 FAX (A/C, No): (954) 772-0447	
	E-MAIL ADDRESS: hroach@loomisco.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Evanston Insurance Company	35378
INSURED Lauderdale By The Sea Chamber of Commerce, Inc 4201 North Ocean Drive Lauderdale By The Sea, FL 33308	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY	X		3AA728570	11/9/2023	11/9/2024	EACH OCCURRENCE \$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC						GENERAL AGGREGATE \$ 2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$ Included
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per person) \$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE \$
	EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE \$
	DED ☐ RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE ☐ OTH-ER ☐
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N N / A						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

Town of Lauderdale-By-The-Sea 4501 N Ocean Blvd Lauderdale By The Sea, FL 33308	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Not For Profit Corporation

LAUDERDALE-BY-THE SEA CHAMBER OF COMMERCE, INC.

Filing Information

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Principal Address

4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Mailing Address

4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Registered Agent Name & Address

NOVAK, PAUL
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Name Changed: 04/07/2018

Address Changed: 04/17/1997

Officer/Director Detail

Name & Address

Title SERGEANT AT ARMS

NOVAK, PAUL
4201 OCEAN DR
LAUDERDALE-BY-THE-SEA, FL 33308

Title Treasurer

Paperny, Brian
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title General Counsel, Vice Chair

Stern, Mark
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title Director

SILVER, MARK
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title Secretary

ZAVELL, ELLEN
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title Chairman

GOLDBERG, HOWARD
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title Director

Cotroneo, Justin
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title Director

BALLARD, BRAD
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title Director

Berger, Elizabeth
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Title Director

Imbrogno, Joe
4201 OCEAN DR
LAUDERDALE-BY-THE SEA, FL 33308

Annual Reports

Report Year	Filed Date
2022	02/03/2022
2023	04/24/2023
2024	02/05/2024

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02/21/1996 -- ANNUAL REPORT	View image in PDF format



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Lucila Lang, Finance Director

Submitting Department: Finance

Item Type: Resolution

Agenda Section: RESOLUTIONS – PUBLIC COMMENTS

Subject Title: RESOLUTION NO. 2024-50 - A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA AUTHORIZING A REVOLVING LINE OF CREDIT AND PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$4,000,000 TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA TAXABLE REVENUE NOTE, SERIES 2024, FOR THE PURPOSE OF FINANCING EXPENSES RELATED TO NATURAL DISASTERS INCLUDING HURRICANES AND OTHER EMERGENCIES OF THE TOWN AND PAYING COSTS OF ISSUANCE NECESSARY AND INCIDENTAL THERETO; APPROVING THE FORM OF REVENUE NOTE, SERIES 2024, AND A REVOLVING LOAN AGREEMENT; PROVIDING OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

Explanation: Following the Commission's direction, Town staff explored potential line of credit options so that we have additional funds that can be used during an emergency. We requested terms from two financial institutions. The table below outlines the terms of our current banking partner, Truist. The second banking institution had higher legal counsel fees and would not waive the bank fees.

Lender	Borrower	Description	Repayment	Bank Fees	Interest Rate	Amount	Legal Counsel Fees
Truist	Town of Lauderdale-By-The-Sea	Revolving Line of Credit for emergency use.	Interest is payable monthly. Principal at maturity.	Waived: \$5,400- Unused Fee \$4,000- Origination Fee	One-Month Term SOFR* + 1.50%	\$2M	\$7,500
						\$4M	\$12,500

**SOFR" = the Secured Overnight Financing Rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or successor administrator) on the Federal Reserve Bank of New York's website.

The term for the Revolving Line of Credit is five years with a total cost to the Town of \$12,500. Truist has agreed to waive the unused and origination fees. If the Town elects to utilize the line of credit, the Town will be limited to no more than 1 draw per month and for an amount of

no less than \$100,000. The loan will be subject to the SOFR which, as a point of reference, was in the range of 6.3 to 6.5 this October. Truist will allow the loan's prepayment without penalty at any time.

At the October 22, 2024, Commission meeting, questions were raised regarding margining and documentary stamps. Staff consulted with our banking partner, Truist, and shared information with the Town Attorney's office, who agreed with the following responses:

1) Does the bank offer margining or portfolio lending? If so, what percentage of the investment value could the Town borrow?

Response: Margining and portfolio lending are available only to individuals, not municipalities.

2) Is the Town required to pay documentary stamps and intangible tax?

Response: No, municipalities are exempt from paying both documentary stamps and intangible tax.

Recommendation: Provide staff directions regarding closing a line of credit. This is a non-budgeted item; therefore the fees will be allocated from contingency which has \$190,000.

Exhibits:

1. Resolution 2024-50 Truist LOC \$4M
2. Loan Agreement With Truist Bank LOC

RESOLUTION NO. 2024-50

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA AUTHORIZING A REVOLVING LINE OF CREDIT AND PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$4,000,000 TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA TAXABLE REVENUE NOTE, SERIES 2024, FOR THE PURPOSE OF FINANCING EXPENSES RELATED TO NATURAL DISASTERS INCLUDING HURRICANES AND OTHER EMERGENCIES OF THE TOWN AND PAYING COSTS OF ISSUANCE NECESSARY AND INCIDENTAL THERETO; APPROVING THE FORM OF REVENUE NOTE, SERIES 2024, AND A REVOLVING LOAN AGREEMENT; PROVIDING OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea (the “Town”) has received a proposal from Truist Bank (the “Lender”) to provide for a revolving line of credit in an amount not exceeding \$4,000,000 at any time for the purpose of providing funds to finance expenses related to natural disasters and other emergencies; and

WHEREAS, the Town Commission of the Town (the “Commission”) deems it to be in the best interests of the Town to approve and authorize the Loan Agreement with the Lender in order to provide access to funds quickly to assist the Town in an emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

SECTION 1. Authority. This Resolution (this "Resolution") is adopted pursuant to Chapter 166, Florida Statutes, the Charter of the Town, and other applicable provisions of law (collectively, the "Act").

SECTION 2. Definitions. Words and phrases used herein in capitalized form and not otherwise defined herein (including, without limitation, in the preamble hereto) shall have the meanings ascribed thereto in the hereinafter defined Loan Agreement, as applicable and, in addition, the following words and phrases shall have the following meanings:

"Authorized Signatories" or "Authorized Signatory" means any one or more of the Mayor, the Vice Mayor of the Town, the Town Manager, Deputy Town Manager, or the Finance Director of the Town.

"Governing Body" means the Town Commission of the Town of Lauderdale-By-The-Sea, Florida.

"Lender" means Truist Bank.

"Loan Agreement" means the Loan Agreement between the Town and the Lender providing for the revolving line of credit.

"Projects" means expenses related to natural disasters including hurricanes and other emergencies and permitted under the Act to be financed with proceeds of the Loan.

"2024 Loan Amount" means not to exceed \$4,000,000.

"2024 Note" means the Town's Taxable Revenue Note, Series 2024 in substantially the form attached as Exhibit "A" to the Loan Agreement.

SECTION 3. Findings. It is hereby ascertained, determined, and declared that:

A. The Town desires to issue the 2024 Note to finance the Projects.

B. The Projects financed with proceeds of the 2024 Note will serve a paramount public purpose of the Town and are necessary for the health, safety and welfare of the citizens and inhabitants of the Town.

C. The Town has received a proposal from the Lender to purchase from the Town its 2024 Note in accordance with the terms of the hereinafter described Loan Agreement and the proceeds of each advance will be loaned to the Town to finance Projects.

D. Because of the need in an emergency to be able to quickly access capital, it is in the best financial interest of the Town to issue the 2024 Note.

E. The Town is authorized and empowered by the Act to issue the 2024 Note and use the proceeds thereof to finance or refinance the Projects.

F. The principal of, premium, if any, and interest on the 2024 Note and all other payments with respect thereto shall be payable from moneys deposited in the funds and accounts pledged herein and by the Loan Agreement, which the Town has full authority to irrevocably pledge. The Town shall never be required to levy ad valorem taxes on any real or personal property to pay the principal of, interest on or any premium with respect to the 2024 Note or to make any other payments required herein, and the 2024 Note shall not constitute a lien on any real or personal property owned by or situated within the limits of the Town.

G. Because of the characteristics of the 2024 Note, prevailing and anticipated market conditions and additional savings to be realized from the expeditious issuance of the 2024 Note, it is not feasible, cost effective or advantageous to enter into the Loan (as hereinafter defined) through a competitive sale and it is in the best interest of the Town to accept the terms of the Loan from the Lender in a principal amount of the 2024 Loan Amount, at a negotiated sale upon

the terms and conditions outlined herein and in the Loan Agreement and as determined by the Authorized Signatories executing the Loan Agreement in accordance with the terms hereof.

SECTION 4. Authorization of Transactions. In order to obtain funds to finance or refinance the Projects, the Town is authorized to obtain a loan (the "Loan"), and to borrow an amount up to the 2024 Loan Amount from the Lender.

Prior to its execution and delivery of the Loan Agreement, the Town shall have received from the Lender a disclosure statement containing the information required by Section 218.385(6), Florida Statutes, and a Truth-in-Bonding Statement pursuant to Section 218.385(2) and (3), Florida Statutes, and no further disclosure is or shall be required by the Town.

SECTION 5. Loan Agreement and 2024 Note. The Town is authorized to execute a Loan Agreement with the Lender in substantially the form attached as Exhibit "A" hereto and to make and deliver to the Lender the 2024 Note in substantially the form attached as Exhibit "A" to the Loan Agreement.

The forms and terms of the Loan Agreement and 2024 Note (collectively, the "Loan Documents") attached hereto are hereby approved, and the Authorized Signatories are authorized on behalf of the Town to execute and deliver the same, with such changes, insertions, omissions and filling of blanks as may be approved by the Authorized Signatories executing the same upon the advice of the Town Attorney, such approval to be conclusively evidenced by the execution thereof by the Authorized Signatories signing the same. The Authorized Signatories are hereby delegated the authority to execute the 2024 Note in an amount not exceeding the 2024 Loan Amount. The Clerk of the Governing Body or any Deputy Clerk of the Governing Body or any

Acting Clerk of the Governing Body may authenticate or attest the signatures of the Authorized Signatories on the Loan Documents.

SECTION 6. Creation of Funds and Accounts. There is hereby created and established the "Town of Lauderdale-By-The-Sea, Florida Revenue Note, Series 2024 Debt Service Account" (the "Debt Service Account") and the "Town of Lauderdale-By-The-Sea, Florida Revenue Note, Series 2024 Project Account" (the "2024 Project Account").

SECTION 7. Loan Agreement and 2024 Note Not to be General Obligations or Indebtedness of the Town. The Loan Agreement and the 2024 Note and the obligations of the Town thereunder shall not be deemed to constitute general obligations or a pledge of the faith and credit of the Town, the State of Florida or any political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable solely from and secured by a lien upon and a pledge of (i) the Non-Ad Valorem Revenues (as defined in the Loan Agreement) budgeted and appropriated and deposited into the Debt Service Account for the 2024 Note, to pay debt service payments and all other amounts due and payable on or under the Loan Documents and (ii) all funds on deposit in the Debt Service Account (including any investment securities on deposit therein) and all investment earnings on any such funds (the "Pledged Funds"), in the manner and to the extent provided herein and in the Loan Agreement.

No holder or owner of the 2024 Note shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the Town or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of debt service with respect thereto, or to maintain or continue any activities of the Town which generate user service charges,

regulatory fees or other non-ad valorem revenues, nor shall any holder or owner of the 2024 Note be entitled to payment of such principal and interest from any other funds of the Town other than the Pledged Funds with respect to the Loan, all in the manner and to the extent provided herein and in the Loan Agreement. The Loan Documents and the indebtedness evidenced thereby shall not constitute a lien upon any real or personal property of the Town, or any part thereof, or any other tangible personal property of or in the Town, but shall constitute a lien only on the Pledged Funds, all in the manner and to the extent provided herein and in the Loan Agreement.

Funds deposited into the Debt Service Account, until applied to the payment of debt service on the 2024 Note, may be invested in investments authorized by law and meeting the Town's written investment policy, which investments shall mature no later than the date on which moneys therein shall be needed to pay such debt service.

SECTION 8. Pledge. The payment of the principal of, premium, if any, and interest under the 2024 Note and other payments due under the Loan Agreement shall be secured forthwith equally and ratably by an irrevocable lien on the Pledged Funds, all in the manner and to the extent provided herein and in the Loan Agreement. The Town does hereby irrevocably pledge such Pledged Funds to the payment of the principal of, premium, if any, and interest on the 2024 Note and other payments due under the Loan Agreement.

SECTION 9. Application of Proceeds. The proceeds of each advance of the Loan shall be applied to, (i) finance the Projects as described in a certificate of an Authorized Signatory upon the delivery of an Advance to the 2024 Note, and (ii) pay the costs of issuance of the Loan.

SECTION 10. Separate Accounts; Trust Funds. The moneys required to be accounted for in the Debt Service Account may be deposited in a single bank or other account, and funds allocated to such accounts may be invested, together with other funds of the Town, in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of moneys on deposit therein and such investments for the various purposes of such account. The designation and establishment of the Debt Service Account shall not be construed to require the establishment of any completely independent, self-balancing fund or account, but rather is intended solely to constitute an earmarking of certain moneys or revenues for certain purposes.

The Debt Service Account created hereunder and any accounts created therein constitute trust funds for the purposes herein and in any subsequent resolution provided. The Town may at any time and from time-to-time deposit moneys from any one or more of the funds and accounts established hereby with a depository permitted under applicable law. Any such depository or depositories shall perform at the direction of the Town the duties of the Town in depositing, transferring and disbursing moneys to and from each of such funds and accounts as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Town and its agents and employees.

SECTION 11. Severability. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Resolution or of a note issued hereunder.

SECTION 12. No Third-Party Beneficiaries. Except as herein otherwise expressly provided, nothing in this Resolution expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and the owner and holder of the 2024 Note issued under and secured by this Resolution and the Loan Agreement, any right, remedy or claim, legal or equitable, under or by reason of this Resolution or the Loan Agreement or any provision hereof, this Resolution or Loan Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the owners and holders from time to time of the 2024 Note issued hereunder.

SECTION 13. Applicable Provisions of Law. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 14. Authorizations. The Authorized Signatories are hereby authorized to execute and deliver on behalf of the Town the Loan Documents as provided hereby. All officials and employees of the Town, including, without limitation, the Authorized Signatories, are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, and contracts on behalf of the Town as they shall deem necessary or desirable in connection with the completion of the Loan and the carrying out of the intention of this Resolution.

SECTION 15. Controlling Law; Members of Governing Body Not Liable. All covenants, stipulations, obligations, and agreements of the Town contained in this Resolution shall be deemed to be covenants, stipulations, obligations, and agreements of the Town to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or

employee of the Town in his or her individual capacity, and neither the members of the Governing Body nor any official executing the Loan Documents shall be liable personally on the Loan Documents or this Resolution or shall be subject to any personal liability or accountability by reason of the issuance or the execution by the Town or such members thereof.

SECTION 16. Effect of Covenants. All covenants, stipulations, obligations and agreements of the Town contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the Town and of the Governing Body and of each department and agency of the Town to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall bind or inure to the benefit of the successor or successors thereof from time to time and any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the Town or upon the Governing Body by the provisions of this Resolution shall be exercised or performed by the Governing Body, or by such other officers, board, body, or commission as may be required by law to exercise such powers or to perform such duties.

SECTION 17. Repeal of Inconsistent Resolutions. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, superseded and repealed.

SECTION 18. Effective Date. This Resolution shall be effective immediately upon its adoption in the manner provided by law.

Passed and Adopted this 12th day of November, 2024.

TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA

ATTEST:

By: _____
Mayor Edmund Malkoon

By: _____
Katrina Adler, Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT "A" TO RESOLUTION
FORM OF LOAN AGREEMENT
(WITH ATTACHED FORM OF 2024 NOTE)

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA

and

TRUIST BANK

LOAN AGREEMENT

Dated as of [____], 2024

**Not to be Outstanding in Excess of
\$4,000,000
Town of Lauderdale-By-The-Sea, Florida
Revenue Note, Series 2024**

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LOAN AGREEMENT

This Loan Agreement (together with any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof, this "Agreement") is made and entered into as of November __, 2024, by and between the TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA (the "Issuer"), a municipal corporation created and existing under the laws of the State of Florida, and TRUIST BANK, a North Carolina banking corporation (together with its successors and assigns, the "Lender");

The Issuer has requested, and subject to the terms and conditions set forth in this Agreement, the Lender has agreed to extend, a taxable revolving line of credit to the Issuer;

The parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

ARTICLE I DEFINITION OF TERMS

Section 1.01 Definitions. Words and terms used in this Agreement and not otherwise defined herein shall have the meanings as set forth in the recitals above, and the following words and terms as used in this Agreement shall have the following meanings:

"Act" means Chapter 166, Florida Statutes and other applicable provisions of Law.

"Additional Indebtedness" means Non-Ad Valorem Revenue Obligations issued by the Issuer after the Delivery Date.

"Advance" means a borrowing of money under the Note, pursuant to Section 5.06 hereof.

"Alternative Benchmark Rate" means a rate of interest per annum equal to the Prime Rate minus two and 5/10 percent (2.5%) which shall adjust daily with changes in Lender's Prime Rate.

"Amortization Installment" means the funds to be deposited in the debt service fund or similar fund or account related to the applicable Non-Ad Valorem Revenue Obligations created for that purpose, in a given Note Year for the payment at maturity or redemption of a portion of Term Obligations of a designated series, as established by resolution of the Issuer at or before the delivery of that series of Term Obligations.

"Annual Budget" means the budget or budgets, as amended and supplemented from time to time, prepared by the Issuer for each Fiscal Year in accordance with the laws of the State of Florida.

"Anti-Corruption Laws" means: (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which the Issuer is located or doing business.

"Anti-Money Laundering Laws" means applicable laws or regulations in any jurisdiction in which the Issuer is located or doing business that relates to money laundering, any predicate

crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Available Amount" means, for any day, the Maximum Commitment Amount net of the aggregate principal amount of Advances honored by the Lender and Outstanding at any time. For the avoidance of doubt, this Agreement is a revolving credit facility and Advances borrowed hereunder may be repaid thereafter and borrowed again.

"Benchmark" means initially Term SOFR, and thereafter it will be the then-current Successor Rate.

"Business Day" means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in Lauderdale-By-The-Sea, Florida or New York, New York or the city where the Principal Office of the Lender is located are authorized by Law to close or (b) a day on which the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

"Calculation Agent" means (i) so long as the Lender holds the Note, the Lender, (ii) if the Lender does not hold the Note, such other bank, financial institution or financial advisor firm, designated from time to time by the Issuer.

"Conforming Changes" means, with respect to any Successor Rate, any technical, administrative or operational changes (including changes to the definitions such as "Business Day," "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of such Successor Rate and to permit the administration thereof by Lender in a manner Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents.

"Costs of the Project" or "Costs" means, to the extent permitted under the Act, any cost of the Project.

"Covenant Obligation Debt Service Requirement" means for a given Note Year the remainder, after subtracting any accrued interest or capitalized interest for that year that has been deposited into the debt service fund or similar fund or account related to the applicable Non-Ad Valorem Revenue Obligations for that purpose, from the sum of:

- (1) The amount required to pay the interest coming due on Non-Ad Valorem Revenue Obligations during that Note Year,
- (2) The amount required to pay the principal of Serial Obligations and the principal of Term Obligations maturing in that Note Year that are not included in the previous Amortization Installments for such Term Obligations, and
- (3) The Amortization Installment for all Term Obligations for that Note Year.

For purposes of determining the Covenant Obligation Debt Service Requirement for Section 3.03 hereof, the following provisions shall apply:

(a) The interest rate on Variable Rate Obligations (other than Taxable Obligations) shall be assumed to be the greater of (1) the average of the Securities Industry and Financial Markets AssociationTM Municipal Swap Index for the immediately preceding 52 weeks (or if not available for such 52-week period, then for the longest immediately preceding period for which available), or if such index is no longer published, a comparable 7-day index for high quality variable rate demand obligations selected by the Issuer, in either case, plus 50 basis points (0.50%), or (2) if the variable rate on such Non-Ad Valorem Revenue Obligations or other indebtedness is determined by reference to an index or a formula based on an index, the average interest rate which would have been applicable to such Variable Rate Obligations (or other variable rate indebtedness) based on such index or formula during the immediately preceding 52-week period (or if not available for such 52-week period, then for the longest immediately preceding period for which available).

(b) The interest rate on Variable Rate Obligations that are Taxable Obligations shall be assumed to be the interest rate quoted for the week preceding the date of calculation on direct United States Treasury obligations having a maturity the same (or approximately the same) as the nominal maturity of the Variable Rate Obligations, plus 50 basis points (0.50%).

(c) If the Issuer has entered into a Qualified Hedge Agreement with respect to Non-Ad Valorem Revenue Obligations, the interest coming due on Non-Ad Valorem Revenue Obligations, up to an amount equal to the "notional" amount of the Qualified Hedge Agreement, shall be the net aggregate amount each applicable period, taking into account (i) the actual interest borne by such Non-Ad Valorem Revenue Obligations for such period (using the assumptions described above for Variable Rate Obligations, if applicable), (ii) the Qualified Hedge Receipts for such period and (iii) the Qualified Hedge Payments for such period, with the payments described in clauses (ii) and (iii) above being calculated on the applicable notional amount and using the assumptions described above for Variable Rate Obligations, if applicable.

(d) If a series of Variable Rate Obligations is subject to purchase by the Issuer pursuant to a mandatory or optional tender by the holders thereof, the "tender" date or dates shall be ignored and the stated maturity dates thereof shall be used for purposes of all calculations hereunder unless a tender notice shall have been delivered, in which case the tender date shall be used.

(e) With respect to Designated Maturity Obligations, the Covenant Obligation Debt Service Requirement for such Non-Ad Valorem Revenue Obligation shall be determined during each Note Year as if the principal of and interest on such Non-Ad Valorem Revenue Obligation were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of up to 20 years from the date of initial issuance. Draw down loans and lines of credit which are Designated Maturity Obligations may be amortized over twenty years from the date of calculation assuming the full amount available thereunder has been drawn or calculated in accordance with this paragraph (e) assuming the full amount available to be drawn thereunder has been drawn and tested only on the date the loan is initially entered into.

"Covenant Obligation Maximum Debt Service Requirement" means, as of any particular date of calculation, the largest Covenant Obligation Debt Service Requirement for any Note Year during the remaining term of the applicable Non-Ad Valorem Revenue Obligations, except that with respect to any Non-Ad Valorem Revenue Obligations for which Amortization Installments have been established, the amount of principal coming due on the final maturity date with respect to such Non-Ad Valorem Revenue Obligations shall be reduced by the aggregate principal amount of such Non-Ad Valorem Revenue Obligations that are to be redeemed or paid from Amortization Installments to be made in prior Note Years.

"Debt" means as of any date and without duplication, all of the following to the extent that they are secured by or payable in whole or in part from any Non-Ad Valorem Revenues: (i) all obligations of the Issuer for borrowed money or evidenced by bonds, notes or other similar instruments; (ii) all obligations of the Issuer to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which arise in the ordinary course of business; (iii) all obligations of the Issuer as lessee under capitalized leases; and (iv) all indebtedness of other persons to the extent guaranteed by, or secured by Non-Ad Valorem Revenues of, the Issuer. Debt shall not include any non-capitalized lease obligation regardless of its treatment for accounting purposes.

"Debt Service Account" means the Town of Lauderdale-By-The-Sea Revenue Note, Series 2024 Debt Service Account established by the Resolution from which the Issuer shall make payments of the principal of, interest on and any redemption or prepayment premiums with respect to the Loan under the Note.

"Default" means the occurrence of any event which, with the giving of notice or the passage of time, or both, would (unless waived by the Lender or cured to the reasonable satisfaction of the Lender) constitute an Event of Default.

"Default Rate" means the lesser of (i) 18% per annum and (ii) the maximum lawful rate.

"Delivery Date" means the date of delivery of the Note to the Lender upon satisfaction of the conditions precedent set forth in Article IV hereof.

"Designated Maturity Obligations" means any Non-Ad Valorem Revenue Obligation for which no mandatory sinking fund redemption requirements have been established which has 25% or more of the aggregate original principal amount of such Non-Ad Valorem Revenue Obligation coming due in any Note Year.

"Determination Day" means that date which is two U.S. Government Securities Business Days prior to the first day of the Interest Period if such day is a U.S. Government Securities Business Day.

"Essential Services" are those services identified by the Issuer in its annual audit as general governmental and public safety expenditures from Total Governmental Funds, less expenditures paid from ad valorem revenues.

"Event of Default" means an event of default specified in Article VI of this Agreement.

"Final Maturity Date" means November [], 2029, or such later date which this Agreement may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Issuer.

"Finance Director" means the Finance Director of the Issuer or her designee.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Issuer pursuant to general law.

"GAAP" means generally accepted accounting principles for governmental accounting, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Interest Payment Date" means the first day of each month, commencing December 1, 2024, and the Final Maturity Date.

"Interest Period" means the period commencing on the date of the Note and with each successive Interest Period commencing on the first day of each month; provided that (i) if any Interest Period would commence on a day other than a Business Day, the then current Interest Period shall be extended and the Interest Period shall commence on the next succeeding Business Day unless such next succeeding business day would fall in the next calendar month, in which case such Interest Period shall commence on the next preceding Business Day, (ii) for any month in which there is no numerically corresponding day in the month on which the Interest Period may commence, then it shall commence on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond the earlier of termination of the Loan whether by maturity or acceleration and (iv) the initial Interest Period may commence on the initial funding or booking date and result in a shorter or longer initial Interest Period.

"Interest Rate" means the Taxable Rate and upon an Event of Default the Default Rate as provided herein.

"Investor Letter" shall have the meaning assigned to such term in Section 4.01.

"Law" means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

"Lender" has the meaning set forth in the introductory paragraph hereof.

"Loan" means the Outstanding aggregate principal amount of the Advances made hereunder and evidenced by the Note.

"Loan Documents" means this Agreement and the Note.

"Maximum Commitment Amount" means \$4,000,000.00, and as the same may hereafter be modified in accordance with the terms of this Agreement.

"Maximum Rate" means an interest rate per annum equal to the maximum rate permitted by Law.

"Mayor" means the Mayor or, in his or her absence or inability to perform, the Vice-Mayor, of the Issuer.

"Non-Ad Valorem Revenue Obligations" means Debt, (i) the primary security for which is provided by a covenant of the Issuer to budget and appropriate Non-Ad Valorem Revenues of the Issuer for the payment of debt service on such obligations, or (ii) primarily secured or payable from another source of funds, but with respect to which the Issuer has also covenanted to budget and appropriate Non-Ad Valorem Revenues of the Issuer for the payment of debt service on such obligations, provided that obligations described in this clause (ii) shall only be considered Non-Ad Valorem Revenue Obligations to the extent the Issuer has included in its budget (by amendment or otherwise) the payment of such Non-Ad Valorem Revenues pursuant to such covenant to pay debt service on such obligations. Notwithstanding the foregoing, Non-Ad Valorem Revenue Obligations shall not include any debt secured by a pledge of the revenues of any enterprise fund under governmental accounting principles, including without limitation, the Issuer's energy system or water, wastewater and stormwater utility systems or any special assessments.

"Non-Ad Valorem Revenues" means all legally available revenues of the Issuer derived from any source whatsoever, other than ad valorem taxation on real and personal property, which are legally available for the payment by the Issuer of debt service on the Non-Ad Valorem Revenue Obligations, including, without limitation, investment income and legally available non-ad valorem revenues derived from sources subject to a prior pledge thereof for the payment of other obligations of the Issuer and available after payment of principal and interest on such other obligations.

"Note" means the Town of Lauderdale-By-The-Sea, Florida Revenue Note, Series 2024, dated as of November [], 2024.

"Note Counsel" means Weiss Serota Helfman Cole & Bierman, PL or such other attorney-at-law or firm of such attorneys designated by the Issuer and having expertise in the legal aspects of the issuance of indebtedness by states and political subdivisions thereof.

"Note Year" means the annual period beginning on the first day of October of each year and ending on the last day of the succeeding September, with the first Note Year ending September 30, 2025; provided however, principal and interest on Debt maturing or becoming subject to redemption on October 1 of any year shall be deemed to mature or become subject to redemption on the last day of the preceding Note Year.

"Noteholder" or "Owner" means initially the Lender and thereafter any transferee to whom the Lender or a subsequent Owner may transfer the Note as shown on the registration books of the Issuer kept for that purpose in accordance with provisions of this Agreement.

"Outstanding" means as to the Note the aggregate amount of Advances honored by the Lender that have not been redeemed or paid by the Issuer.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001).

"Person" means any individual, corporation, not for profit corporation, partnership, limited liability company, joint venture, association, professional association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

"Pledged Funds" means (i) the Non-Ad Valorem Revenues budgeted and appropriated and deposited into the Debt Service Account to pay debt service and all other amounts due and payable on the Note, and (ii) all funds on deposit in the Debt Service Account (including all investment securities on deposit therein) and all investment earnings on any such funds.

"Prime Rate" means, for any day, a rate per annum equal to Truist Bank's announced Prime Rate and shall change effective on the date any change in Truist Bank's Prime Rate is publicly announced as being effective.

"Principal Office" means, with respect to the Lender, the office located at 515 E. Las Olas Boulevard, 7th Floor, Fort Lauderdale, Florida 33301, or such other office as the Lender may designate to the Issuer in writing.

"Project" means any qualified expenses related to natural disasters such as hurricanes and other emergencies undertaken by the Issuer and permitted under the Act to be financed with the proceeds of the Loan, including, without limitation, costs of issuance of each Advance hereunder and capitalized interest on the Loan.

"Property" means, when used in connection with any Person, any and all rights, title and interests of such Person in and to any and all property (including cash) whether real, personal or mixed, or tangible or intangible, and wherever situated.

"Qualified Hedge Agreement" means an agreement such as an interest rate swap, collar, cap, or other functionally similar agreement, between the Issuer and a counterparty, meeting the requirements of the ordinance or resolution authorizing the applicable Non-Ad Valorem Revenue Obligations to which such agreement applies and which payments to be made by the counterparty thereunder have been budgeted by the Issuer to the payment on such Non-Ad Valorem Revenue Obligations.

"Qualified Hedge Payment" means the payment obligation of the Issuer arising under a Qualified Hedge Agreement, which is calculated on the basis of interest on a notional amount which shall correspond with all or a portion of the principal amount of applicable Non-Ad Valorem Revenue Obligations, based upon a fixed or a variable rate index or formula. Qualified Hedge Payments include only regularly scheduled payments under a Qualified Hedge Agreement determined by reference to interest on a notional amount and shall not include any other payments under such agreement (for example any termination fee, indemnification obligations or other fees payable to the counterparty).

"Qualified Hedge Receipts" means the payment obligations of the counterparty to the Issuer arising under a Qualified Hedge Agreement which are calculated on the basis of interest on a notional amount which shall correspond with the principal amount of Non-Ad Valorem Revenue Obligations described in the Qualified Hedge Agreement or such other certificate or ordinance or resolution of the Issuer, based upon a fixed or variable rate index or formula. Qualified Hedge Receipts include only regularly scheduled payments under a Qualified Hedge Agreement determined by reference to interest on a notional amount and shall not include any other payments under such agreement (for example, any termination fee, indemnification obligations or other fees payable to the counterparty).

"Qualified Institutional Buyer" shall have the meaning assigned to such term in Rule 144A promulgated under the Securities Act.

"Relevant Governmental Body" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"Relevant Governmental Body Recommended Rate" means, in respect of any relevant day, the rate (inclusive of any spreads or adjustments which may be positive or negative) recommended as the replacement for the Benchmark by the Relevant Governmental Body (which rate may be produced by the Federal Reserve Bank of New York or another administrator).

"Resolution" means a Resolution adopted by the Town Commission of the Issuer on November 12, 2024, relating to this Agreement and the Note.

"Serial Obligations" means all Non-Ad Valorem Revenue Obligations that are not Term Obligations.

"State" means the State of Florida.

"Taxable Obligations" means Non-Ad Valorem Revenue Obligations the interest on which is not intended at the time of the issuance thereof to be excluded from the gross income of the holders thereof for federal income tax purposes.

"Taxable Rate" means an interest rate per annum equal to Term SOFR plus 1.50%.

"Term Obligations" means all Non-Ad Valorem Revenue Obligations of a series for which Amortization Installments are established.

"Term SOFR" means the Term SOFR reference rate for a one month tenor as administered by the Term SOFR Administrator and quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by Lender on the Determination Day; provided that if as of 5:00 p.m. (New York time) on the Determination Day, Term SOFR for such tenor has not been published by the Term SOFR Administrator, then, subject to Section 5.08, the rate used will be Term SOFR for such tenor as published by the Term SOFR Administrator for the immediately preceding U.S. Government Securities Business Day on which such rate was published on the Term SOFR Administrator's website so long as such immediately preceding U.S. Government Securities Business Day is not more than three (3) U.S.

Government Securities Business Days prior to such Determination Day; and further provided if Term SOFR would be less than zero percent (0%), then it shall be deemed to be zero percent (0%).

"Term SOFR Administrator" means CME Group Benchmark Administration Limited or a successor administrator of the Term SOFR selected by Lender in its sole discretion.

"Town Manager" means the Town Manager of the Issuer, and in the absence or unavailability of the Town Manager, any assistant Town Manager.

"U.S. Government Securities Business Day" Any day except for (i) a Saturday, (ii) a Sunday, or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Variable Rate Obligations" means Non-Ad Valorem Revenue Obligations issued with a variable, adjustable, convertible or other similar rate which is not fixed in percentage at the date of issue for the entire term thereof (excluding any provisions that adjust the interest rate upon a change in tax law or in the tax treatment of interest on the debt or upon a default).

Section 1.02 Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 1.03 Titles and Headings. The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II REPRESENTATIONS OF ISSUER

The Issuer represents and warrants to the Lender that:

Section 2.01 Powers of Issuer. The Issuer is a municipal corporation, duly organized and validly existing under the constitution and the Laws of the State. The Issuer has the power to borrow the amount provided for in this Agreement, to execute and deliver the Loan Documents, to secure the Note in the manner contemplated hereby and by the Resolution, and to perform and observe all the terms and conditions of the Loan Documents on its part to be performed and observed. The Issuer may lawfully issue the Note in order to finance the Costs of the Project.

Section 2.02 Authorization of Loan. The Issuer has full legal right, power and authority to execute and deliver the Loan Documents and to issue the Note, and the Issuer has complied and will comply with all provisions of applicable Law in all material matters relating to such

transactions. The Issuer has duly authorized the borrowing of the Maximum Commitment Amount provided for in this Agreement, the execution and delivery of this Agreement, and the issuance and delivery of the Note to the Lender, and to that end the Issuer warrants that it will, subject to the terms hereof and of the Note, take all action and do all things which it is authorized by Law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Note. The Loan Documents have been duly authorized, executed and delivered to the Lender and constitute the legal, valid and binding obligation of the Issuer enforceable in accordance with the terms thereof and the terms hereof, and the Note is entitled to the benefits and security of this Agreement, subject to the provisions of the bankruptcy laws of the United States of America and to other applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights, heretofore or hereinafter enacted, to the extent constitutionally applicable, and provided that its enforcement may also be subject to equitable principles that may affect remedies or other equitable relief, or to the exercise of judicial discretion in appropriate cases. All approvals, consents, and orders of and filings with any Governmental Authority or agency which would constitute a condition precedent to the issuance of the Note or the execution and delivery of or the performance by the Issuer of its obligations under this Agreement and the Note have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect.

Section 2.03 No Violation of Law or Contract. The Issuer is not in default in any material respect under any agreement or other instrument to which it is a party or by which it may be bound, the breach of which could result in a material and adverse impact on the financial condition of the Issuer, the ability of the Issuer to perform its obligations hereunder or under the Note or the legality, validity, binding effect or enforceability of any Loan Document. The making and performing by the Issuer of this Agreement and the Note will not violate any applicable provision of Law, or any resolution of the Issuer, or any regulation, order or decree of any court, and will not result in a breach of any of the terms of any agreement, indenture, note or instrument to which the Issuer is a party or by which the Issuer is bound, the breach of which could result in a material and adverse impact on the financial condition of the Issuer, the ability of the Issuer to perform its obligations hereunder or under the Note or the legality, validity, binding effect or enforceability of any Loan Document.

Section 2.04 Litigation, Etc. There are no actions or proceedings pending against the Issuer or, to the knowledge of the Issuer, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the financial condition or operations of the Issuer, or which questions the legality, validity, binding effect or enforceability of this Agreement, the Note, the Resolution, the Pledged Funds or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

Section 2.05 Financial Information. The financial information regarding the Issuer furnished to the Lender by the Issuer in connection with the Loan is accurate, and there has been no material and adverse change in the financial condition of the Issuer from that presented in such information.

Section 2.06 No Usury. The terms of this Agreement and the Note regarding the calculation and payment of interest and fees do not violate any applicable Florida law regarding permissible maximum rates of interest.

Section 2.07 Non-Ad Valorem Revenue Obligations. The Issuer has no Non-Ad Valorem Revenue Obligations outstanding as of the date hereof.

ARTICLE III COVENANTS OF THE ISSUER

Section 3.01 Affirmative Covenants. The Issuer covenants, for so long as any of the principal amount of or interest on the Loan is outstanding and unpaid or any duty or obligation of the Issuer hereunder or under the Note remains unpaid or unperformed, as follows:

(a) Payment. The Issuer covenants that it shall duly and punctually pay, but solely from the Pledged Funds, the principal of the Note and the interest thereon on the dates, at the place and in the manner (and subject to the limitations) provided herein and in the Note according to the true intent and meaning thereof.

(b) Maintenance of Existence. The Issuer covenants that it will at all times maintain its existence until all amounts due and owing from the Issuer to the Lender hereunder and under the Note have been paid in full.

(c) Financial Statements.

(i) The Issuer shall provide the Lender with its audited financial statements for each Fiscal Year ending on and after September 30, 2024 within two hundred seventy (270) days after the end thereof.

(ii) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and in any event within five (5) Business Days thereof, a certificate signed by the Town Manager of the Issuer specifying in reasonable detail the nature and period of existence thereof and what action the Issuer has taken or proposes to take with respect thereto.

(iii) The Issuer shall make available electronically (via website) its annual budget within thirty (30) days of its adoption, for the next succeeding Fiscal Year.

(iv) (A) Promptly following a written request of the Lender, a certificate of the Mayor or Town Manager as to the existence or absence, as the case may be, of a Default or an Event of Default under this Agreement; and (B) promptly upon obtaining knowledge of any "default" or "event of default" as defined under any loan agreement or similar resolution, notice specifying in reasonable detail the nature and period of existence thereof and what action the Issuer has taken or proposes to take with respect thereto.

(v) Such other information regarding the business affairs, financial condition and/or operations of the Issuer as the Lender may from time to time reasonably request.

(d) Separate Accounts. Any amounts drawn under the Note and not immediately spent shall be set aside in a separate fund or account of the Issuer until needed to pay Costs of the Project.

(e) Compliance with Laws. The Issuer shall comply with all applicable federal, state and local laws, regulatory requirements including, without limitation, all Anti-Money Laundering Laws and Anti-Corruption Laws that are applicable to the Issuer.

(f) Books and Records. The Issuer will keep proper books of record and account in which full, true and correct entries in accordance with GAAP. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein.

Section 3.02 Negative Covenants. The Issuer covenants, for so long as any of the principal amount of or interest on the Loan is outstanding and unpaid or any obligations of the Issuer hereunder or under the Note remains unpaid or unperformed, that:

(a) Financing Documents. The Issuer shall not alter or amend the Resolution without prior written approval of the Lender.

(b) Use of Proceeds. The Issuer shall not use the proceeds of any Advance for any purpose other than to pay Costs of the Project.

Section 3.03 Anti-Dilution. The Issuer may incur Additional Indebtedness only if the actual receipts of Total Governmental Funds of the Issuer (as specified in the Issuer's audited financial statements under the table entitled Statement of Revenues, Expenditures and Changes in Fund Balances Governmental Funds) for the prior Fiscal Year, less ad valorem revenues, less Non-Ad Valorem Revenues from Total Governmental Funds pledged to secure Senior Debt, and less the amount required to pay for Essential Services for the prior Fiscal Year was at least 1.50 times the amount of the Covenant Obligation Maximum Debt Service Requirement of all Non-Ad Valorem Revenue Obligations then outstanding and those proposed to be issued.

Section 3.04 Registration and Exchange of Note; Persons Treated as Owners. So long as the Note remains outstanding, the Issuer will keep books for the registration and transfer of the Note. Upon the written consent of the Issuer, the Issuer will transfer the registration of the Note in whole and not in part, upon written request of the Lender specifying the name, address and taxpayer identification number of the transferee.

The Person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Loan shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.

Section 3.05 Pledge; Payment of Principal and Interest; Limited Obligation. In order to secure the payment of the principal of and interest on the Loan, the Issuer hereby pledges and grants a lien upon, and security interest in, the Pledged Funds to the Owner of the Note.

The Issuer promises that it will promptly pay the principal of and interest on the Loan at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof, provided that the principal of and interest on the Loan is payable

solely from the Pledged Funds, and nothing in the Note or this Agreement shall be construed as pledging any other funds or assets to such payment or as authorizing such payment to be made from any other source. The Issuer is not and shall not be liable for the payment of the principal of and interest on the Loan or for the performance of any pledge, obligation or agreement for payment undertaken by the Issuer hereunder or under the Note from any Property other than the Pledged Funds. No Owner shall have any right to resort to legal or equitable action to require or compel the payment of any amount required by the Note or this Agreement from any source other than the Pledged Funds.

Section 3.06 Covenant to Budget and Appropriate. The Issuer hereby covenants and agrees, to the extent permitted by and in accordance with applicable Law and budgetary processes, to prepare, approve and appropriate in its Annual Budget for each Fiscal Year, by amendment if necessary, and to deposit to the credit of the Debt Service Account in a timely manner as needed to pay debt service on the Note, Non-Ad Valorem Revenues of the Issuer in an amount which is equal to the debt service with respect to the Note for the applicable Fiscal Year. Such covenant and agreement on the part of the Issuer to budget and appropriate sufficient amounts of Non-Ad Valorem Revenues shall be cumulative, and shall continue until such Non-Ad Valorem Revenues in amounts sufficient to make all required payments hereunder and under the Note as and when due, including any delinquent payments, shall have been budgeted, appropriated and actually paid into the Debt Service Account; provided, however, that such covenant shall not constitute a lien, either legal or equitable, on any of the Issuer's Non-Ad Valorem Revenues or other revenues, nor shall it preclude the Issuer from pledging in the future any of its Non-Ad Valorem Revenues or other revenues to other obligations, nor shall it give the Noteholder a prior claim on the Non-Ad Valorem Revenues. Anything herein to the contrary notwithstanding, all obligations of the Issuer hereunder shall be secured by a lien upon only the Non-Ad Valorem Revenues actually budgeted and appropriated and deposited into the Debt Service Account, as provided for herein. The Issuer is prohibited by Law from expending moneys not appropriated or in excess of its current budgeted revenues and surpluses. The obligation of the Issuer to budget, appropriate and make payments hereunder from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after satisfying funding requirements for obligations having an express lien on or pledge of such revenues and after satisfying funding requirements for Essential Services of the Issuer and subject in all respects to the restrictions of Section 166.241(2), Florida Statutes, which generally provides that the governing body of each municipality may only make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources. Notwithstanding the foregoing or anything herein to the contrary, the Issuer has not covenanted to maintain any service or program now provided or maintained by the Issuer which generates Non-Ad Valorem Revenues.

Section 3.07 Business Days. In any case where the due date of interest on or principal of the Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of payment.

Section 3.08 Officers and Employees of the Issuer Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Agreement or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any officer, agent or employee, as such, of the Issuer past, present or future, it being expressly understood (a)

that the obligation of the Issuer under this Agreement and the Note is solely a corporate one, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, any of the officers, agents, or employees, as such, of the Issuer, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and all such rights and claims against, every officer, agent, or employee, as such, of the Issuer under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Agreement and the issuance of the Note on the part of the Issuer.

Section 3.09 Note Mutilated, Destroyed, Stolen or Lost. In case the Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Issuer proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Note so surrendered shall be canceled.

Section 3.10 Debt Service Account. The Issuer shall apply all moneys on deposit in the Debt Service Account to the timely payment of the principal of, and interest on the Note and other amounts due and payable under this Agreement and the Note. Money in the Debt Service Account, until applied in accordance with the provisions hereof, shall be held in trust for and be subject to a lien and charge in favor of the registered owner of the Note.

ARTICLE IV CONDITIONS OF LENDING

Section 4.01 Closing Documents. On or prior to the Delivery Date, the Lender shall have received executed copies of the Loan Documents, together with the following supporting documents, all of which shall be satisfactory in form and substance to the Lender (such satisfaction to be evidenced by the purchase of the Note by the Lender):

(a) The opinion of counsel for the Issuer, dated the Delivery Date and addressed to the Lender, regarding the due authorization, execution, delivery, validity and enforceability of this Agreement, the Note, and the due enactment of the Resolution, in form and substance satisfactory to the Lender;

(b) The opinion of Note Counsel to the Issuer, dated the Delivery Date addressed to the Lender, relating to the validity and enforceability of the Resolution, this Agreement and the Note, in form and substance satisfactory to the Lender;

(c) A certificate of the Issuer, dated the Delivery Date, and executed by an authorized representative of the Issuer, certifying as to such matters as reasonably requested by the Lender;

(d) A certificate of the Issuer, dated the Delivery Date, and executed by an authorized representative of the Issuer, certifying the names and signatures of the persons

authorized to sign, on behalf of the Issuer, this Agreement and the Note and the other documents to be delivered by it hereunder or thereunder; and

(e) Such additional supporting documents as the Lender may reasonably request.

On or prior to the Delivery Date, the Lender shall have delivered the investment letter in substantially the form attached as Exhibit C hereto (the "Investor Letter").

ARTICLE V

THE LOAN; ISSUER'S OBLIGATION; DESCRIPTION AND PAYMENT TERMS; ADVANCES; ADJUSTMENT TO INTEREST RATE

Section 5.01 The Loan. The Lender hereby agrees to make Advances to the Issuer in an aggregate amount not to exceed the Maximum Commitment Amount, to be evidenced by the Note, to provide funds to finance the Costs of the Project upon the terms and conditions set forth in the Resolution and in this Agreement. The Issuer agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in this Agreement and the Note. Principal amounts advanced and repaid hereunder may be readvanced; provided, however the principal amount outstanding at any given time hereunder shall not exceed the Maximum Commitment Amount.

The Maximum Commitment Amount may be reduced at the written request of the Issuer upon thirty days' advance notice to the Lender, together with amounts, if any, payable under Section 5.05 herein. In the event that the aggregate outstanding principal amount of Advances hereunder shall exceed the Maximum Commitment Amount, due to a reduction in the Maximum Commitment Amount or otherwise, the Issuer shall promptly repay to the Lender the principal in such amount that the Outstanding Advances will no longer exceed the Maximum Commitment Amount and agrees to pay any interest accrued thereon on the next Interest Payment Date.

Section 5.02 Adjustment to Interest Rate. Upon the occurrence and during the continuance of an Event of Default, the Interest Rate shall be adjusted to the Default Rate.

Section 5.03 Note Not to be General Obligation. NEITHER THIS AGREEMENT NOR THE NOTE SHALL CONSTITUTE A GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION OR LIMITATION, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED FUNDS IN THE MANNER AND TO THE EXTENT PROVIDED HEREIN AND IN THE RESOLUTION. No Noteholder shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the Issuer or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of debt service with respect thereto, or to maintain or continue any activities of the Issuer which generate user service charges, regulatory fees or other non-ad valorem revenues, nor shall any Noteholder be entitled to payment of such principal and interest from any other funds of the Issuer other than the Non-Ad Valorem Revenues budgeted and appropriated and deposited in accordance with Section 3.06

hereof and Pledged Funds, all in the manner and to the extent herein and in the Resolution provided.

Section 5.04 Description and Payment Terms of the Note.

(a) To evidence the Loan, the Issuer shall issue and deliver to the Lender the Note in the form attached hereto as Exhibit A. .

(b) So long as the Default Rate shall not be in effect, the Calculation Agent shall determine the Interest Rate on each Determination Day, and such rate shall become effective on the first day of the immediately succeeding Interest Period. Such Interest Rate shall be in effect to and including the last day of the related Interest Period. All Advances evidenced by the Note shall bear interest at the same Interest Rate. In the event an Advance is advanced on a date other than a Determination Day and no Advances are currently outstanding hereunder, the Calculation Agent shall determine Interest Rate based upon the Interest Rate in effect two (2) U.S. Government Securities Business Days immediately preceding the date of such Advance.

(c) Unless repaid earlier pursuant to the terms hereof, the principal of and interest on the Loan shall be repaid in full on the Final Maturity Date. The interest on the Loan shall be paid on each Interest Payment Date.

(d) The Interest Rate borne by the Note may never exceed the Maximum Rate. If, due to the limitation of the Maximum Rate, the Lender receives less interest during any Interest Period than it would be otherwise entitled to receive hereunder or under the Note but for the limitation of the Maximum Rate, during any subsequent Interest Period in which the Lender is otherwise entitled hereunder or under the Note to be paid interest and such interest is calculated at a rate which is less than the Maximum Rate, the Lender shall instead receive interest for such Interest Period computed at a rate equal to the Maximum Rate until the Lender has received, in the aggregate, the amount of interest due such Lender hereunder and under the Note but for the limitation of the Maximum Rate.

Section 5.05 Right of Prepayment. Upon two (2) Business Days' notice to the Lender, the Note may be prepaid prior to the Final Maturity Date, in whole or in part on any Business Day, without premium.

Section 5.06 Requisitions for Advances; Other Conditions

(a) Upon three (3) Business Days' written notice to the Lender, the Issuer may borrow an aggregate principal amount from time to time up to the Available Amount, by requesting Advances hereunder and under the Note, provided that no Advance will be made after the Final Maturity Date and provided further that not more than one (1) Advance may be made per calendar month. Each Advance must be in an amount of at least \$100,000 or such lesser amount equal to the Available Amount. The Issuer's obligation to pay the principal of, and interest on the Advances made hereunder shall be evidenced by the Note and the records of the Lender, updated for each Advance and each principal repayment, shall be conclusive absent manifest error. Any request for any Advance received by the Lender after 2:00 p.m. Eastern time shall be deemed received on the next Business Day.

(b) The Lender shall not be obligated to make any Advances unless (i) no Default or Event of Default has occurred and is continuing; (ii) the representations and warranties of the Issuer in this Agreement shall be true on correct on the date of such Advance and (iii) the Issuer delivers to the Lender a written request for such Advance, in substantially the form attached as Exhibit B hereto, executed by the the Town Manager or the Finance Director (and who has an incumbency certificate on file with the Lender), indicating the principal amount of the Advance requested, the date on which such Advance is to be made, and certifying as to the foregoing clauses (i) and (ii).

(c) Upon the satisfaction of the applicable conditions set forth herein, the Lender will make the proceeds of each Advance available to the Issuer on the date specified in the applicable request for an Advance by effecting a wire transfer of such amount by the Lender's close of business of the date of such Advance in immediately available funds to an account designated in writing by the Issuer to the Lender, or in such other manner as requested in the request for the Advance. Amounts Advanced hereunder shall be deposited by the Issuer into the 2024 Project Account established under the Resolution.

Section 5.07 Computation of Interest and Fees; Application of Payments. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed. All payments made on the Note shall be applied first to interest accrued to the date of payment and next to the unpaid principal balance.

Section 5.08 Effect of Benchmark Transition Event.

(a) In the event Lender determines in its sole discretion that (i) there is a public announcement by the administrator of a Benchmark or a Relevant Governmental Body that such Benchmark will cease or has ceased to be published; (ii) a public announcement is made by the administrator of a Benchmark or any Relevant Governmental Body that the Benchmark is no longer representative; or (iii) a Relevant Governmental Body has determined that Lender may no longer utilize the Benchmark for purposes of setting interest rates (each a "Benchmark Transition Event"); Lender will have no obligation to make, fund or maintain a loan based on the Benchmark and on a date and time determined by Lender, without any further action or consent of by Issuer or amendment to this Agreement or any other Loan Document, the first available alternative set forth in the order below that can be determined by Lender shall replace the Benchmark ("Successor Rate"):

- (x) Relevant Governmental Body Recommended Rate; or
- (y) Alternative Benchmark Rate.

(b) In connection with the implementation of a Successor Rate, Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, any amendments implementing such Successor Rate or Conforming Changes will become effective without any further action or consent of Issuer. Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero percent (0%), the Successor Rate will be deemed to be zero percent (0%) for the purposes of this Agreement and the other Loan Documents. For avoidance of doubt, following the implementation of the Successor Rate, in determining the

applicable Interest Rate any margin or credit spread to the index under the Note shall be added to the Successor Rate and any provisions for a minimum rate shall apply.

(c) Lender will notify (in one or more notices) Issuer of the implementation of any Successor Rate. Any determination or decision that may be made by Lender pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in Lender's sole discretion and without consent from Issuer.

(d) In the event Lender determines in its sole discretion that Lender cannot make, fund, or maintain a loan based upon the Benchmark due to illegality or the inability to ascertain or determine said rate on the basis provided for herein ("Unavailability Period") and a Benchmark Transition Event has not occurred, then at the election of Lender the Benchmark shall convert to the Alternative Benchmark Rate for purposes of calculating the Interest Rate on the then outstanding principal balance and for interest accruing on any fundings or advances requested by Issuer and, thereafter, the Interest Rate on the Note shall adjust simultaneously with any fluctuation in the Alternative Benchmark Rate. In the event Lender determines that the circumstances giving rise the Unavailability Period have ended, at such time as determined by Lender the Benchmark will revert to the prior Benchmark (provided a Benchmark Transition Event has not occurred). Lender shall provide notice, which may be after the implementation of the Alternative Benchmark Rate as contemplated hereunder, to Issuer of any Benchmark change that is made pursuant to this Section. For avoidance of doubt, following the implementation of the Successor Rate, in determining the applicable Interest Rate any margin or credit spread to the index under the Note shall be added to the Successor Rate and any provisions for a minimum rate shall apply.

(e) In the event that any applicable law or regulation, guideline or order or the interpretation or administration thereof by any governmental or regulatory authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to Lender of any amounts payable by the Issuer hereunder (other than taxes imposed on the overall net income of Lender) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Lender, or (iii) shall impose any other condition with respect to the Note, and the result of any of the foregoing is to increase the cost to Lender of making or maintaining the loan evidenced by the Note or to reduce any amount receivable by Lender under the loan evidenced by the Note, and Lender determines that such increased costs or reduction in amount receivable was attributable to the use of the current Benchmark, then the Issuer shall from time to time, upon demand by Lender, pay to Lender additional amounts sufficient to compensate Lender for such increased costs ("Additional Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to the Issuer by Lender, shall be conclusive and binding in the absence of manifest error.

ARTICLE VI EVENTS OF DEFAULT

Section 6.01 General. An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) payment of principal of or interest on any Loan or the Note or Non-Ad Valorem Revenue Obligations; or

(b) failure by the Issuer to observe and perform any other covenant, condition or agreement contained herein, in any of the Loan Documents, or in any other document or agreement executed in connection herewith on its part to be observed or performed for a period of thirty (30) days after written notice is given to the Issuer from the Lender, specifying such failure and directing that it be remedied; provided, however, the Issuer shall not be deemed to be in default hereunder if such default cannot reasonably be cured within such thirty (30) day period if the Issuer, in good faith institutes appropriate curative action and diligently pursues such action until default has been corrected, such time not to exceed an additional sixty (60) days from the end of the thirty (30) day period; or

(c) any representation or warranty made in writing by or on behalf of the Issuer in this Agreement or the Note shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or

(d) the Issuer admits in writing its inability to pay its debts generally as they become due or files a petition as a debtor in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

(e) the Issuer is adjudged insolvent by a court of competent jurisdiction, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Issuer, a receiver or trustee of the Issuer or of the whole or any part of its property, and if the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(f) the Issuer shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State.

Section 6.02 Remedies of Lender. Upon the occurrence and during the continuance of any Event of Default, the Interest Rate shall be adjusted to the Default Rate and the Lender may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) by written notice to the Issuer, declare the obligation of the Lender to make Advances hereunder to be terminated, whereupon such commitment and obligation shall be terminated;

(b) cure any Default, Event of Default or event of nonperformance hereunder or under any Loan Document; *provided, however*, that the Lender shall have no obligation to effect such a cure;

(c) exercise, or cause to be exercised, any and all remedies as it may have hereunder or under the Note and as otherwise available at Law and at equity; and

(d) if, in connection with the issuance of any Additional Indebtedness, the Issuer provides the holder of such Additional Indebtedness acceleration rights as a remedy to any event of default or otherwise has the ability to demand such facility be immediately due and payable after an event of default thereunder, then such provision shall be deemed to be incorporated by reference herein and upon the request of the Lender, the Issuer and the Lender shall promptly amend this Agreement so as to provide the Lender with the same provisions. If any Additional Indebtedness of the Issuer that is secured by a covenant to budget and appropriate Non-Ad Valorem Revenues is accelerated upon an event of default, the Lender shall have the same right to accelerate the payments hereunder and under the Note.

Nothing in this Section shall be construed to prohibit the Issuer from taking any action, to the extent permitted by applicable Law, to remedy any Event of Default.

ARTICLE VII MISCELLANEOUS

Section 7.01 No Waiver; Cumulative Remedies. No failure or delay on the part of the Lender in exercising any right, power, remedy hereunder, or under the Note shall operate as a waiver of the Lender's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy hereunder or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by Law or in equity.

Section 7.02 Amendments, Changes or Modifications to the Agreement. This Agreement shall not be amended, changed or modified without the prior written consent of the Lender and the Issuer.

Section 7.03 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 7.04 Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

Section 7.05 Term of Agreement. Except as otherwise specified in this Agreement, this Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the Issuer in connection herewith shall be in full force and effect from the Delivery Date and shall continue in effect until as long as the Note is outstanding and unpaid.

Section 7.06 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service; and five days after it is sent, if mailed, certified mail, return receipt requested, postage prepaid. In each case, notice shall be sent to:

If to the Issuer: Town of Lauderdale-By-The-Sea, Florida
4501 North Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Attention: Town Manager

If to the Lender: Truist Bank
515 E. Las Olas Boulevard, 7th Floor
Fort Lauderdale, Florida 33301
Attention: Nanci Campbell, Authorized Agent

or to such other address as either party may have specified in writing to the other using the procedures specified above in this Section 7.06.

Section 7.07 Applicable Law. This Agreement, the Note and transactions contemplated herein, shall be construed pursuant to and governed by the substantive laws of the State.

Section 7.08 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The Issuer shall have no rights to assign any of their rights or obligations hereunder without the prior written consent of the Lender.

Section 7.09 Conflict. In the event any conflict arises between the terms of this Agreement and the terms of any other Loan Document, the terms of this Agreement shall govern in all instances of such conflict.

Section 7.10 No Third Party Beneficiaries. It is the intent and agreement of the parties hereto that this Agreement is solely for the benefit of the parties hereto and no other person shall have any rights or privileges hereunder.

Section 7.11 No Advisory or Fiduciary Relationship. In connection with all aspects of the transactions contemplated by this Agreement and the Note (including in connection with any amendment, waiver or other modification of this Agreement or the Note), the Issuer acknowledges that: (a)(i) any arranging, structuring and other services regarding this Agreement and the Note provided by the Lender are arm's length commercial transactions between the Issuer on the one hand, and the Lender on the other hand, (ii) the Issuer has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Issuer is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and the Note; (b)(i) the Lender is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Issuer or any other Person and (ii) the Lender does not have any obligation to the Issuer with respect to the transactions contemplated by this Agreement and the Note, except

those obligations expressly set forth herein; and (c) the Lender may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer, and the Lender does not have any obligation to disclose any of such interests to the Issuer.

Section 7.12 Entire Agreement. Except as otherwise expressly provided, this Agreement and the other Loan Documents embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 7.13 Further Assurances. The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of carrying out the transactions contemplated by this Agreement.

Section 7.14 Jurisdiction; Venue; Waiver of Jury Trial. In the event that any action, suit or other proceeding is brought in connection with this Agreement, the parties hereto hereby (i) irrevocably consent to the exercise of jurisdiction over them and, to the extent permitted by applicable Laws, their property, by the United States District Court for the Southern District of Florida, Fort Lauderdale Division or the Circuit Court of Broward County, Florida, and (ii) irrevocably waive any objection they or either of them might now or hereafter have or assert to the venue of any such proceeding in any court described in clause (i) above.

THE LENDER AND THE ISSUER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE NOTE OR ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

Section 7.15 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The Issuer shall have no right to assign any of its rights or obligations hereunder without the prior written consent of the Lender. The Lender shall assign the Note, in whole and not in part, to a Qualified Institutional Buyer.

Section 7.16 USA Patriot Act Notification; Government Regulation. The Lender hereby notifies the Issuer that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (as amended from time to time, the "Patriot Act"), the Lender may be required to obtain, verify and record information that identifies the Issuer, which information may include the name and address of the Issuer and other information that will allow the Lender to identify the Issuer in accordance with the Patriot Act, and the Issuer hereby agrees to take any action necessary to enable the Lender to comply with the requirements of the Patriot Act.

Section 7.17 Expenses. The Issuer shall pay all out of pocket expenses of the Lender including the fees and expenses of counsel to the Lender in an amount not to exceed \$12,500 which shall be paid by the Issuer directly to Holland & Knight LLP, (ii) any waiver or consent

hereunder or any amendment hereof or (iii) the enforcement or protection of the Lender's rights during or after any Default or Event of Default or alleged Default or Event of Default hereunder.

Section 7.18 Survival of Representations and Warranties. All agreements, covenants, representations and warranties contained in this Agreement and in any certificate delivered pursuant hereto shall survive the execution and delivery of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA

By: _____
Mayor

ATTEST:

By: _____
Town Clerk

TRUIST BANK

By: _____
Name: Nanci Campbell
Title: Authorized Agent

EXHIBIT A

[____], 2024

Not to Exceed
\$4,000,000.00

THIS NOTE IS SUBJECT TO TRANSFER RESTRICTIONS, AS MORE
FULLY DESCRIBED IN SECTION 7.15 OF THE LOAN AGREEMENT.

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA
REVENUE NOTE, SERIES 2024

The Town of Lauderdale-By-The-Sea, Florida (the "Issuer"), a municipal corporation created and existing under the laws of the State of Florida, for value received, promises to pay, but solely from the sources hereinafter provided, to the order of Truist Bank or registered assigns permitted under the hereinafter described Agreement (hereinafter, the "Owner"), the principal sum of \$4,000,000.00 or such lesser amount as shall have been advanced and shall be outstanding hereunder, together with interest on the principal balance outstanding at the Interest Rate. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed.

All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed to such terms by the Loan Agreement dated as of November [___], 2024 between the Issuer and Truist Bank (the "Agreement"). In the event of any inconsistencies as between the Agreement and the Note, the terms and provisions of the Agreement shall control.

Principal of and interest on this Note are payable in lawful money of the United States of America at such place as the Owner may designate to the Issuer.

Interest shall be payable monthly in arrears on the first day of each month commencing in the first full month after which the initial draw has been made (each an "Interest Payment Date").

If the date for payment of the principal of or interest on this Note shall be a day other than a Business Day, and payment on the next Business Day shall have the same force and effect as if made on the nominal date of payment.

Upon the occurrence and during the continuance of an Event of Default, the Interest Rate on this Note will increase to the Default Rate.

The entire unpaid principal balance, together with all accrued and unpaid interest hereon and any fees under the Agreement, shall be due and payable in full on November [___], 2029. All payments by the Issuer pursuant to this Note shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to the principal sum due.

This Note is payable solely from the extent provided in the Agreement and subject to the pledge of the Pledged Funds as more specifically provided in the Resolution and the Agreement. Notwithstanding any other provision of this Note the Issuer shall not be monetarily liable in

connection herewith from any property other than as provided in the Agreement and the Resolution.

NOTWITHSTANDING ANYTHING HEREIN OR IN THE AGREEMENT OR THE RESOLUTION TO THE CONTRARY, THIS NOTE AND THE INTEREST HEREON DOES NOT AND SHALL NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER BUT SHALL BE PAYABLE SOLELY FROM THE MONEYS AND SOURCES DESIGNATED THEREFOR PURSUANT TO THE AGREEMENT, THIS NOTE AND THE RESOLUTION. NEITHER THE FAITH AND CREDIT NOR ANY AD VALOREM TAXING POWER OF THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE OR OTHER COSTS INCIDENTAL HERETO.

The principal of this Note may be prepaid at the option of the Issuer in whole or in part at any time subject to the conditions set forth in the Agreement.

This Note is a revolving line of credit. Principal amounts advanced and repaid under this Note may be re-advanced; provided, however the principal amount outstanding at any given time hereunder shall not exceed the Maximum Commitment Amount.

The Issuer, to the extent permitted by law, hereby waives presentment, demand, protest and notice of dishonor.

This Note is issued pursuant to a Resolution duly adopted by the Issuer on November 12, 2024, and the Agreement, and is subject to all the terms and conditions of the Agreement. All terms, conditions and provisions of the Agreement are by this reference thereto incorporated herein as a part of this Note.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate the Act or any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Town of Lauderdale-By-The-Sea, Florida has caused this Note to be executed in its name by the manual signature of its Mayor and attested by the manual signature of its Town Clerk, and its seal to be impressed hereon, all as of this [____] day of November, 2024.

TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA

(SEAL)

ATTEST:

By: _____
Mayor

By: _____
Town Clerk

[FORM OF ABBREVIATIONS]

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM as tenants in common

TEN ENT as tenants by the entireties

JT TEN as joint tenants with the right of survivorship and not as tenants in common

UNIFORM TRANSFER MIN ACT - _____ Custodian _____ under
Uniform Transfer to Minors Act _____ (Cust.) _____ (Minor)
(State)

Additional abbreviations may also be used though not in the above list.

[FORM OF ASSIGNMENT]

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney to transfer the said Note on the books of the District, with full power of substitution in the premises.

Dated:

Social Security Number or Employer:

Identification Number of Transferee:

Signature guaranteed:

NOTICE: Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

NOTICE: The assignor's signature to this Assignment must correspond with the name as it appears on the face of the within Note in every particular without alteration or any change whatsoever.

EXHIBIT B

REQUISITION NO. _____

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA
REVENUE NOTE,
SERIES 2024

REQUISITION FOR ADVANCES

The Town of Lauderdale-By-The-Sea, Florida (the "Issuer"), pursuant to that certain Loan Agreement (the "Agreement") dated as of November [], 2024, between the Issuer and Truist Bank (the "Lender"), does hereby make application to the Lender under the Agreement for disbursement of funds to pay a portion of the Costs of the Project (all terms used herein in capitalized form having the meanings given to those terms in the Agreement) in the following manner:

Amount Requested: \$ _____

Date Advance to be made: _____

Proceeds of the Advance to be distributed as follows:

- ☐ Wire Transfer (Account Number _____,
Routing Number _____)
- ☐ Check sent to Town of Lauderdale-By-The-Sea, Florida,
_____, _____, _____, or such
other address as attached hereto.
- ☐ Account Transfer (Account Number _____)

All representations and statements made herein are for the benefit of the Lender and the other parties related to the issuance of the Note and may not be relied upon by third parties.

The undersigned certifies that:

- (i) No Default or Event of Default under the Agreement has occurred and is continuing; and
- (ii) All representations and warranties of the Issuer contained in the Agreement are true and correct as of the date hereof (except for the representations made as of a specific date).

Dated as of _____, 20__.

TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA

By: _____
Title: _____

APPROVED:

TRUIST BANK

By: _____
Title: _____

EXHIBIT C

FORM OF INVESTOR LETTER

[_____] , 2024

Town of Lauderdale-By-The-Sea, Florida
4501 North Ocean Drive
Lauderdale-By-The-Sea, Florida 33308

Re: Not to Exceed \$[_____] Town of Lauderdale-By-The-Sea, Florida
Revenue Note, Series 2024

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of all of the above-referenced note (the "*Note*"), dated its date of issuance. The Note was issued under and secured in the manner set forth pursuant to the Loan Agreement dated as of [_____] , 2024, between the Town of Lauderdale-By-The-Sea, Florida (the "*Issuer*") and Truist Bank (the "*Lender*," the "*undersigned*," "*us*" or "*we*," as applicable) (the "*Loan Agreement*"). We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Note has not been registered pursuant to the Securities Act of 1933, as amended (the "*1933 Act*"), the securities laws of any state nor has the Loan Agreement been qualified pursuant to the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Note (i) is not being registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state and (ii) will not be listed on any securities exchange.

2. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Note.

3. We have authority to own the Note and to execute this letter and any other instruments and documents required to be executed by the Lender in connection with the ownership of the Note.

4. The undersigned is a duly appointed, qualified and acting representative of the Lender and is authorized to cause the Lender to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Lender.

5. The Lender is a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act.

6. The undersigned understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Note. The undersigned has made its own inquiry and analysis with respect to the Issuer, the Note and

the security therefor, and other material factors affecting the security for and payment of the Note.

7. The undersigned acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Issuer, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Agreement, the Note and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Note.

Very truly yours,

TRUIST BANK

By: _____

Name: Nanci Campbell

Title: Authorized Agent



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Jhanelle Campbell, Development Services Director

Submitting Department: Administration

Item Type: Resolution

Agenda Section: RESOLUTIONS – PUBLIC COMMENTS

Subject Title: RESOLUTION 2024-51 - A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A ROW AGREEMENT WITH FLORIDA POWER & LIGHT FOR THE UNDERGROUND CONVERSION OF CERTAIN OVERHEAD ELECTRIC DISTRIBUTION FACILITIES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Explanation: Kai Stadler is the developer of record for two duplexes under construction at 221-251 Shore Court. Mr. Stadler submitted plans to Florida Power and Light ("FPL") to bury the power lines between the two duplexes in accordance with the Town Code. However, his proposal to bury the power lines between the two duplexes was denied by FPL. FPL is requiring that the power lines needed to complete the project either be installed within the Town's right of way along Seagrape Drive or within an easement on property not owned by Mr. Stadler. Mr. Stadler requested an easement from the other private property owner, where FPL specified, but his request was denied. As a result, FPL has stated that installation of the power lines along Seagrape Drive is the only remaining appropriate pathway in accordance with FPL practices. Mr. Stadler, along with Town staff, made several attempts over the last few months to find alternatives that meet FPL's requirements and do not require directional boring and installation of the power lines for this development within the public right-of-way, but they have had no success.

At its September 19, meeting, the Town Commission granted staff permission to proceed with the execution of the proposed agreement with FPL. Therefore, Staff has prepared the attached resolution to proceed with execution of the agreement with FPL (**Exhibit 1**). Resolution 2024-51 authorizes the Town Manager to execute the Conversion Agreement with FPL together with such non-substantial changes as are deemed necessary by the Town Manager and approved as to form and legal sufficiency by the Town Attorney. It is also important to note that this agreement would hold the Town financially responsible for certain costs, including the relocation costs of the lines once buried. To address this, Town staff has also prepared Resolution 2024-60 which includes a separate agreement with Mr. Stadler, stipulating that he will reimburse the Town for all costs associated with the installation of the power line including but not limited to: (i) Costs associated with the preparation, negotiation, and execution of the

Agreement; (ii) Costs incurred by the Town to secure any necessary permits, easements, or legal descriptions required under the Conversion Agreement; (iii) Costs associated with the relocation or rearrangement of FPL facilities as detailed in Section 3 of the Conversion Agreement between the Town and FPL; (iv) Costs related to any construction or excavation services required to protect or support the Underground Facilities, as necessitated by future construction or excavation in close proximity to the Underground Facilities; (v) Any legal fees, court costs, or other expenses incurred by the Town in enforcing the terms and conditions of the Conversion Agreement.

Recommendation: Town Staff recommends approval of Resolution 2024-51.

Exhibits:

1. Exhibit 1- Resolution 2024-51 Approving ROW Agreement With FPL For Underground Conversions
2. Exhibit A- FPL -ROW Agreement
3. Exhibit A- Exhibit A- SKY 360 WORK AREA FOR UNDERGROUNDING
4. Exhibit A- Exhibit B- FPL Facilities Identification and Cost Reimbursement
5. Exhibit A- Exhibit C_ FPL Construction Drawings

RESOLUTION NO. 2024-51

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A ROW AGREEMENT WITH FLORIDA POWER & LIGHT FOR THE UNDERGROUND CONVERSION OF CERTAIN OVERHEAD ELECTRIC DISTRIBUTION FACILITIES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea (the “Town”) has agreed to initiate a project for the underground conversion of certain overhead electric distribution facilities located within the Town’s rights-of-way (the “ROW”); and

WHEREAS, the Town desires to enter into an agreement, in substantially the form attached hereto as Exhibit “A,” with Florida Power & Light (“FPL”) for the underground conversion of certain electric distribution facilities located within the Town’s ROW (the “Conversion Agreement”); and

WHEREAS, Town Staff recommends that the Town Commission approve and authorize the Conversion Agreement with FPL; and

WHEREAS, the Town Commission desires to approve the Conversion Agreement with FPL, in substantially the form attached hereto as Exhibit “A,” and authorize the Town Manager to execute the Conversion Agreement; and

WHEREAS, the Town Commission deems it to be in the best interests of public safety, aesthetic improvement, and long-term reliability to approve and authorize the Conversion Agreement with FPL.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval of Conversion Agreement. The Conversion Agreement in substantially the form attached hereto as Exhibit “A,” between the Town and FPL is hereby approved.

Section 3. Authorization to Execute Conversion Agreement. The Town Manager is hereby authorized to execute the Conversion Agreement with FPL, attached hereto as Exhibit “A,” together with such non-substantial changes as are deemed necessary by the Town Manager and approved as to form and legal sufficiency by the Town Attorney.

Section 4. Authorization to Implement. The appropriate Town officials are authorized to execute all necessary documents and to take any necessary action to effectuate the intent of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of _____, 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT A
CITY/COUNTY RIGHT-OF-WAY
AGREEMENT FOR UNDERGROUND CONVERSIONS

THIS AGREEMENT (the “**Agreement**”) is made and entered into this _____ day of _____, 20____ by and between _____ (“**Local Government**”), a Florida municipal corporation or county with an address of _____ and Florida Power & Light Company (“**FPL**”), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, Local Government has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the “**Conversion**”):

_____ (collectively, the “**Existing Overhead Facilities**”) to underground facilities, including transformers, switch cabinets and other appurtenant facilities some of which may be installed above ground (collectively, the “**Underground Facilities**”) and has further requested that certain of the Underground Facilities be placed in certain of its road rights-of-way (“**Local Government ROW**”) and/or certain road rights-of-way owned by or under the jurisdiction of other agencies (“**Other ROW**”). Local Government ROW and Other ROW may be referred to collectively as “**ROW**”; and

WHEREAS, the Local Government has agreed to pay FPL the cost of such Conversion as required by FPL’s electric tariff and Section 25-6.115 of the Florida Administrative Code and has or will enter into a separate Underground Facilities Conversion Agreement with FPL; and

WHEREAS, FPL is willing, subject to the terms and conditions set forth in this Agreement, FPL’s electric tariff and Section 25-6.115 of the Florida Administrative Code, to place certain of the Underground Facilities in the ROW.

NOW THEREFORE, in recognition of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the parties covenant and agree as follows:

1. The foregoing recitals are true and correct, and are hereby incorporated by reference into this Agreement.

EXHIBIT A

2. Conditions Precedent to Placement of Underground Facilities in ROW

- (a) Local Government covenants, represents and warrants that:
 - (i) Local Government has full legal right and authority to enter into this Agreement;
 - (ii) Local Government has full legal right and authority to take all actions and measures necessary to fulfill Local Government's obligations under this Agreement;
 - (iii) Local Government hereby authorizes the use of the ROW by FPL for the purposes stated herein.
- (b) All applicable permits for FPL to install, construct, or maintain Underground Facilities in ROW must be issued on a timely basis by the appropriate agency, subject to the timely filing for permits by FPL.
- (c) Local Government agrees to provide, at its expense, a legal description that is acceptable to FPL of the ROW to be occupied by the Underground Facilities at a time before FPL initiates the design of the Underground Facilities. Said legal description shall be made part of this Agreement and attached as Exhibit "A".
- (d) FPL agrees to identify and document all existing FPL underground facilities within the ROW that will not be included under this Agreement. Local Government shall reimburse FPL's reasonable costs and expenses to deliver said documentation. Said documentation shall be made part of this Agreement and attached as Exhibit "B".
- (e) FPL warrants that the design of the Underground Facilities to which Local Government has agreed are in compliance with all operational and safety guidelines, codes and standards. FPL and Local Government have mutually agreed upon the location of the facilities within the ROW as per the construction drawings. Said construction drawings shall be attached as Exhibit "C" to this agreement, are part of this agreement, and may be amended to reflect changes to location of facilities as required.

3. Relocation and Rearrangement of FPL Facilities. If the Local Government or other agency with control over the Local Government ROW or Other ROW, for any reason whatsoever, requires that FPL relocate or rearrange, in whole or in part, any Underground Facilities (as they are to exist as a result of this Conversion, or as they may later be modified, upgraded, or otherwise altered) from or within the Local Government ROW or Other ROW, the Local Government, notwithstanding any language to the contrary in any applicable permit or franchise agreement, and prior to any such relocation by FPL, shall provide FPL with a substitute location, satisfactory to FPL, obtain any easements that may be necessary, and shall pay FPL for the costs of any such relocation, adjustment or rearrangement, now or in the future. Local Government shall reimburse FPL for all costs to locate, expose, protect or support the Underground Facilities, whether underground or above ground, in the event of future construction or excavation in close proximity to the Underground Facilities, when such services are required by Local Government or other agency with control over the Local Government

EXHIBIT A

ROW or Other ROW Local Government shall use its best efforts in any design and construction of its future road improvement projects to avoid or mitigate the necessity of relocating or adjusting the Underground Facilities in Local Government ROW and, to the extent reasonably practicable, in Other ROW.

Local Government shall only be responsible for relocation costs associated with replacement facilities conforming to FPL standards in effect at the time of relocation. Any costs associated with the replacement facilities to provide increased capacity, improved reliability, future use facilities, or other such enhancements over and above the FPL standards in effect at the time of the relocation shall not be the responsibility of Local Government.

Nothing herein shall preclude Local Government from obtaining reimbursement for any and all costs requiring FPL to relocate or rearrange any of its Underground Facilities from that entity which initiated the requirement for the relocation or rearrangement of the facilities, excluding only other agencies which own or have jurisdiction over the ROW.

FPL shall be responsible for any and all costs of removal or relocation when such removal or relocation is initiated by FPL. Additionally, FPL agrees that when any portion of a street is excavated by FPL in the location, relocation or repair of any of its facilities when said location, relocation or repair is initiated by FPL, the portion of the street so excavated shall, within a reasonable time and as early as practical after such excavation, be replaced by FPL at its expense in a condition as good as it was at the time of such excavation.

4. **Abandonment or Sale of Local Government ROW.** If the Local Government desires to subsequently abandon or discontinue use of the Local Government ROW, and ownership of the land is transferred to a private party, the Local Government, as a condition of and prior to any such sale, abandonment, or vacation, shall grant FPL an easement satisfactory to FPL for the Underground Facilities then existing within the ROW or require the transferee to so grant FPL an easement satisfactory to FPL at the time of transfer. If ownership of the Local Government ROW is transferred to another public entity, that public entity shall take the ROW subject to the terms and conditions of this Agreement.

5. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities placed in the ROW.

6. **Title and Ownership of Underground Facilities.** Title and ownership of Underground Facilities installed by FPL as a result of this Agreement shall, at all times, remain the property of FPL.

7. **Conversion Outside ROW.** In the event that the FPL Underground Facilities are not, for any reason other than the sole error of FPL or its contractors,

EXHIBIT A

constructed within the ROW, Local Government shall grant or secure, at Local Government's sole cost and expense, new easements or ROW grants for the benefit of FPL for the placement of the Underground Facilities in these areas, and shall secure subordinations of any mortgages affecting these tracts to the interest of FPL. In the alternative, at the discretion of Local Government, Local Government shall reimburse FPL for all costs incurred to remove said facilities which were constructed outside the ROW and for reinstallation within the ROW. FPL shall be responsible at completion of construction for notifying Local Government in writing of FPL's approval and acceptance of the conversion as being constructed within the ROW. Upon acceptance there shall be no further responsibility on the Local Government for relocations referenced in this paragraph.

8. **Agreement Subject to FPL's Electric Tariff.** This Agreement is subject to FPL's electric tariff, including but not limited to the general rules and regulations for electric service and the rules of the Florida Public Service Commission.

9. **Venue; Waiver of Jury Trial.** This Agreement shall be enforceable in _____ County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in _____ County, Florida. By entering into this Agreement, FPL and the Local Government expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

10. **Attorney Fees.** In the event it becomes necessary for either party to institute or defend legal proceedings as a result of the failure of the other party to comply with the terms, covenants, or provisions of this Agreement, each party in such litigation shall bear its own cost and expenses incurred and extended in connection therewith, including, but not limited to attorneys' fees and court costs through all trial and appellate levels.

11. **Assignment.** The Local Government shall not assign this Agreement without the written consent of FPL.

12. **Recording.** This Agreement shall be adopted by the Local Government and maintained in the official records of Local Government for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.

13. **Conflict between Terms of Permit or Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government and FPL, the terms of this Agreement shall control.

EXHIBIT A

14. **Notice.** Any notice, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand delivered, telecopied, sent by Federal Express or a comparable overnight service or by U. S. registered or certified mail, with return receipt requested and postage prepaid to each party at their respective addresses set forth below:

As to Local Government:

With copies to:

As to FPL:

EXHIBIT A

IN WITNESS WHEREOF, Florida Power & Light Company and Local Government have executed this Agreement on the date first set forth above.

For **LOCAL GOVERNMENT:**

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Approved as to Terms and Conditions: _____
(signature/title)

Approved as to Form and Legal Sufficiency: _____
(signature/title)

For **FLORIDA POWER & LIGHT COMPANY**

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

SKETCH & DESCRIPTION
10' F.P.L. EASEMENT
SILVER SHORES SECTION OF LAUDERDALE BY THE SEA - UNIT A
(P.B. 28, PG. 39, B.C.R.)
TOWN OF LAUDERDALE BY THE SEA, BROWARD COUNTY, FLORIDA

SURVEYOR'S NOTES:

1. Reproductions of this Sketch are not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper. Additions or deletions to this sketch by other than the signing party is prohibited without written consent of the signing party.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor.
3. The land description shown hereon was prepared by the Surveyor.
4. Bearings shown hereon are assumed, based on the west right-of-way line of Seagrape Drive, having a bearing of N 04°00'20" W.
5. Data shown hereon was compiled from instrument(s) of record and does not constitute a boundary survey.
6. Abbreviation Legend: F.P.L.= Florida Power & Light Company; L.B.= Licensed Business; B.C.R.= Broward County Records; No.= Number; O.R.B.= Official Records Book; P.B.= Plat Book; PG.= Page; P.L.S.= Professional Land Surveyor; P.O.B.= Point of Beginning; P.O.C.= Point of Commencement; P.O.T.= Point of Termination; R/W= Right-of-Way; W/= With; $\varnothing$ = Centerline.

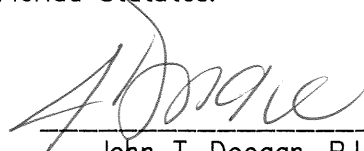
CERTIFICATION:

I HEREBY CERTIFY that the attached Sketch and Description of the hereon described property is true and correct to the best of my knowledge and belief as prepared under my direction. I FURTHER CERTIFY that this Sketch and Description meets the Standards of Practice set forth in Chapter 5J-17, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Date: October 02, 2024

John T.
Doogan,
P.L.S.

Digitally signed
by John T.
Doogan, P.L.S.
Date: 2024.10.02
09:40:54 -04'00'



John T. Doogan, P.L.S.
Florida Registration No. 4409
AVIROM & ASSOCIATES, INC.
L.B. No. 3300
E-Mail: John@AviromSurvey.com

NOT VALID WITHOUT ALL SHEETS

REVISIONS		AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING 50 S.W. 2nd AVENUE, SUITE 102 BOCA RATON, FLORIDA 33432 (561) 392-2594 / www.AVIROMSURVEY.com © 2024 AVIROM & ASSOCIATES, INC. all rights reserved. This sketch is the property of AVIROM & ASSOCIATES, INC. and should not be reproduced or copied without written permission.	JOB #:	13212
			SCALE:	N/A
			DATE:	10/01/2024
			BY:	K.C.
			CHECKED:	J.T.D.
			F.B.	N/A PG. N/A
			SHEET:	1 OF 4

SKETCH & DESCRIPTION

10' F.P.L. EASEMENT

SILVER SHORES SECTION OF LAUDERDALE BY THE SEA - UNIT A
(P.B. 28, PG. 39, B.C.R.)
TOWN OF LAUDERDALE BY THE SEA, BROWARD COUNTY, FLORIDA

LAND DESCRIPTION:

A strip of land being a portion of Lot 3, Block 4 and a portion of the platted public right-of-way, SILVER SHORES SECTION OF LAUDERDALE BY THE SEA - UNIT A, according to the plat thereof as recorded in Plat Book 28, Page 39 of the Public Records of Broward County, Florida described as follows:

A 10 foot wide F.P.L. Easement being 5 feet on each side of the following described centerline:

COMMENCING at the southwest corner of said Lot 3; thence N 04°00'20" W along the west line of said Lot 3, a distance of 6.00 feet; thence N 85°59'40" E, 5.00 feet to the POINT OF BEGINNING of said centerline; thence S 04°00'20" E along a line 5 feet east of and parallel with the west line and its southerly extension of said Lot 3, a distance of 11.00 feet; thence N 85°59'40" E along a line 5 feet south of and parallel with the south line of said Lot 3, being the north right-of-way line and its easterly extension of Shore Court, according to said plat, a distance of 110.00 feet; thence N 04°00'20" W along a line 5 feet east of and parallel with the east line of said Block 4, being the west right-of-way line and its northerly and southerly extension of Seagrape Drive, according to said plat, a distance of 250.00 feet; thence S 85°59'40" W along a line 5 feet north of and parallel with the north line of Lot 1, Block 4, being the south right-of-way line and its easterly extension of Lake Court, according to said plat, a distance of 110.00 feet; thence N 04°00'20" W along a line 5 feet east of and parallel with the southerly extension of the west line of Lot 3, Block 3, according to said plat, a distance of 45.00 feet to a POINT OF TERMINATION on the south line of said Lot 3, Block 3 being the north right-of-way line of said Lake Court.

The sidelines of said easement to be extended or shortened to meet at angle points and form a continuous strip of land containing 5,260 square feet, more or less.

NOT VALID WITHOUT ALL SHEETS

REVISIONS



AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING

50 S.W. 2nd AVENUE, SUITE 102
BOCA RATON, FLORIDA 33432
(561) 392-2594 / www.AVIROMSURVEY.com

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JOB #: **13212**

SCALE: N/A

DATE: 10/01/2024

BY: K.C.

CHECKED: J.T.D.

F.B. N/A PG. N/A

SHEET: **2 OF 4**

10' F.P.L. EASEMENT

MATCHLINE

(See Sheet 4)

LOT 7

LOT 2

BLOCK 4

**SILVER SHORES SECTION OF
LAUDERDALE BY THE SEA - UNIT A**

(P.B. 28, PG. 39 B.C.R.)

**10' F.P.L.
EASEMENT**

LOT 3

SEAGRAPE DRIVE

NORTH

LOT 4

W LINE LOT 3-

6.00' —
N 04°00'20" W
P.O.C. —
SW CORNER LOT 3

N R/W LINE-

11.00' —
S 04°00'20"
S EXTENSION OF
W LINE LOT 3

SHORE COURT
(P.B. 28, PG. 39 B.C.R.)

GRAPHIC SCALE IN FEET

$$1'' = 30'$$

NOT VALID WITHOUT ALL SHEETS



50 S.W. 2nd AVENUE, SUITE 102
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SHEET: 3 OF 4

EXHIBIT B

FPL TO PROVIDE EXHIBIT B INFORMATION

CONDITIONS

FPL agrees to identify and document all existing FPL underground facilities within the ROW that will not be included under this Agreement. Local Government shall reimburse FPL's reasonable costs and expenses to deliver said documentation. Said documentation shall be made part of this Agreement and attached as Exhibit "B".

EXHIBIT C

FPL TO PROVIDE EXHIBIT C INFORMATION

CONDITIONS

FPL warrants that the design of the Underground Facilities to which Local Government has agreed are in compliance with all operational and safety guidelines, codes and standards. FPL and Local Government have mutually agreed upon the location of the facilities within the ROW as per the construction drawings. Said construction drawings shall be attached as Exhibit "C" to this agreement, are part of this agreement, and may be amended to reflect changes to location of facilities as required.



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Jhanelle Campbell, Development Services Director

Submitting Department: Administration

Item Type: Resolution

Agenda Section: RESOLUTIONS – PUBLIC COMMENTS

Subject Title: RESOLUTION 2024-60- A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A DEVELOPER AGREEMENT WITH SKY 360 DEVELOPMENT, LLC. FOR THE REIMBURSEMENT OF COSTS INCURRED AND ASSOCIATED WITH THE UNDERGROUND CONVERSION OF CERTAIN OVERHEAD ELECTRIC DISTRIBUTION FACILITIES WITHIN THE TOWN'S ROW; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DEVELOPER AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Explanation: Kai Stadler is the developer of record for two duplexes under construction at 221-251 Shore Court. Mr. Stadler submitted plans to Florida Power and Light ("FPL") to bury the power lines between the two duplexes in accordance with the Town Code. However, his proposal to bury the power lines between the two duplexes was denied by FPL. FPL is requiring that the power lines needed to complete the project either be installed within the Town's right of way along Seagrape Drive or within an easement on property not owned by Mr. Stadler. FPL has stated that installation of the power lines along Seagrape Drive is the only remaining appropriate pathway in accordance with FPL practices.

At its September 19, meeting, the Town Commission granted staff permission to proceed with execution of an agreement with FPL to convert the lines to underground facilities at 221-251 Shore Court. Therefore, Staff prepared Resolution 2024-51 to proceed with execution of the agreement with FPL. Resolution 2024-51, which is also on tonight's agenda, authorizes the Town Manager to execute the Conversion Agreement with FPL. It is also important to note that this agreement would hold the Town financially responsible for certain costs, including the relocation costs of the lines once buried. To address this, Town staff has also prepared Resolution 2024-60 (**Exhibit 1**) which includes a separate agreement with Mr. Stadler, stipulating that he will reimburse the Town for all costs associated with the installation of the power lines.

Recommendation: Town Staff recommends approval of Resolution 2024-60

Exhibits:

1. Exhibit 1- Resolution 2024-60- Approving Developer Agreement With Sky360

Development LLC for Reimbursement of Underground Conversions

2. Exhibit A-Developer Agreement Between Town and Sky 360 Development Inc
3. Exhibit A- Exhibit A- FPL -ROW Agmt

RESOLUTION NO. 2024-60

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A DEVELOPER AGREEMENT WITH SKY 360 DEVELOPMENT, LLC. FOR THE REIMBURSEMENT OF COSTS INCURRED AND ASSOCIATED WITH THE UNDERGROUND CONVERSION OF CERTAIN OVERHEAD ELECTRIC DISTRIBUTION FACILITIES WITHIN THE TOWN'S ROW; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DEVELOPER AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea (the "Town") has agreed to initiate a project for the underground conversion of certain overhead electric distribution facilities located within the Town's rights-of-way (the "ROW"); and

WHEREAS, the Town has entered into an agreement with Florida Power & Light ("FPL") for the underground conversion of certain electric distribution facilities located within the Town's ROW (the "Conversion Agreement"); and

WHEREAS, Sky 360 Development Inc. (the "Developer") is developing property located at 221-251 Shore Court within the Town (the "Property"); and

WHEREAS, the Developer will benefit from and necessitates the underground conversion project as set forth in the Conversion Agreement; and

WHEREAS, the Developer acknowledges and agrees that all costs incurred and associated with the underground conversion project as set forth in the Conversion Agreement, shall be the sole responsibility of the Developer; and

WHEREAS, the Town desires to enter into an agreement, in substantially the form attached hereto as Exhibit “A,” with the Developer for the reimbursement of all costs incurred in relation to the underground conversion project as set forth in the Conversion Agreement (the “Developer Agreement”); and

WHEREAS, the Town Commission desires to approve the Developer Agreement with the Developer, in substantially the form attached hereto as Exhibit “A,” and authorize the Town Manager to execute the Developer Agreement; and

WHEREAS, Town Staff recommends that the Town Commission approve and authorize the Developer Agreement; and

WHEREAS, the Town Commission deems it to be in the best interests of public safety, aesthetic improvement, and long-term reliability to approve and authorize the Developer Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval of Developer Agreement. The Developer Agreement in substantially the form attached hereto as Exhibit “A,” between the Town and Developer is hereby approved.

Section 3. Authorization to Execute Developer Agreement. The Town Manager is hereby authorized to execute the Developer Agreement, attached hereto as Exhibit “A,” together with such non-substantial changes as are deemed necessary by the Town Manager and approved as to form and legal sufficiency by the Town Attorney.

Section 4. Authorization to Implement. The appropriate Town officials are authorized to execute all necessary documents and to take any necessary action to effectuate the intent of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of _____, 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

DEVELOPER AGREEMENT BETWEEN THE TOWN OF LAUDERDALE-BY-THE-SEA AND SKY 360 DEVELOPMENT LLC.

THIS AGREEMENT (the “**Agreement**”) is made and entered into this _____ day of _____, **2024**, by and between **TOWN OF LAUDERDALE-BY-THE-SEA** (the “Town”), a Florida municipal corporation, (the “Town”), and **SKY 360 DEVELOPMENT, LLC**, c/o Kai Stadler (the “Developer”).

WHEREAS, the Town of Lauderdale-By-The-Sea (the “Town”) has agreed to initiate a project for the underground conversion of certain overhead electric distribution facilities located within the Town’s rights-of-way (the “ROW”); and

WHEREAS, the Town has entered into an agreement with Florida Power & Light (“FPL”) for the underground conversion of certain electric distribution facilities located within the Town’s ROW, which is attached hereto and made a part hereof as Exhibit “A” (the “Conversion Agreement”); and

WHEREAS, Sky 360 Development Inc. (the “Developer”) is developing property located at 221-241 Shore Court within the Town (the “Property”); and

WHEREAS, the Property will benefit from and necessitates the underground conversion project as set forth in the Conversion Agreement; and

WHEREAS, the Town and Developer agree that it is in the best interests of public safety, aesthetic improvement, and long-term reliability to proceed with the underground conversion project set forth in the Conversion Agreement; and

WHEREAS, the Developer acknowledges and agrees that all costs incurred and associated with the underground conversion project as set forth in the Conversion Agreement, shall be the sole responsibility of the Developer; and

WHEREAS, the Developer acknowledges and agrees to reimburse the Town for any and all cost associated with the underground conversion project as set forth in the Conversion Agreement.

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

1. **Recitals.** The foregoing recitals are true and correct, and are hereby incorporated by reference into this Agreement.
2. **Conditions Precedent to Issuance of Certificate of Occupancy.**

- (a) Developer covenants, represents and warrants that:
 - i. Developer has full legal right and authority to enter into this Agreement;
 - ii. Developer has full legal right and authority to take all actions and measures necessary to fulfill Developer's obligations under this Agreement;
 - iii. Developer hereby acknowledges the use of the ROW by FPL for the purposes stated in the Conversion Agreement.
 - (b) The Developer shall provide payment to the Town within thirty (30) days of receiving an invoice detailing the costs incurred. The invoice shall include a detailed breakdown of the costs, along with any supporting documentation deemed necessary by the Town as a condition precedent to the issuance of a Certificate of Occupancy.
- 3. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities placed in the ROW.
- 4. **Reimbursement of Costs.** The Developer agrees to reimburse the Town for any and all costs incurred by the Town in relation to the Conversion Agreement, including but not limited to: (i) Costs associated with the preparation, negotiation, and execution of the Agreement; (ii) Costs incurred by the Town to secure any necessary permits, easements, or legal descriptions required under the Conversion Agreement; (iii) Costs associated with the relocation or rearrangement of FPL facilities as detailed in Section 3 of the Conversion Agreement between the Town and FPL; (iv) Costs related to any construction or excavation services required to protect or support the Underground Facilities, as necessitated by future construction or excavation in close proximity to the Underground Facilities; (v) Any legal fees, court costs, or other expenses incurred by the Town in enforcing the terms and conditions of the Conversion Agreement.
- 5. **Non-Payment.** In the event of non-payment by the Developer, the Town reserves the right to take any legal action necessary to recover the outstanding amount, including but not limited to placing a lien on any property owned by the Developer within the jurisdiction of the Town.
- 6. **Survival of Obligation.** The Developer agrees that its obligation to reimburse the Town as set forth herein shall survive the termination of this Agreement and shall be binding on any successors or assigns of the Developer.
- 7. **Venue; Governing Law.** This Agreement shall be enforceable in Broward County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Broward County, Florida. By entering into this Agreement, the Developer expressly waives any rights it may have to a trial by jury of any civil litigation related to or arising out of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

8. **Attorney Fees.** The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys' fees and costs as well as attorneys' fees and costs incurred in enforcing this prevailing parties attorneys' fees provision.
9. **Recording/Modification.** This Agreement shall be recorded by the Town Clerk in the Public Records of Broward County with the Developer paying the costs for such recordation. Upon recordation, this Agreement shall remain in full force and effect and be binding upon the undersigned and the heirs, successors and assigns of the undersigned, until such time as the same is modified or terminated in writing by the Town Manager or designee.
10. **Successors in Interest.** The obligations and benefits of this Agreement shall inure to all successors in interests to the parties to this Agreement.
11. **Assignment and Amendment.** This Agreement may not be assigned, without prior written approval of the Town. This Agreement may only be amended, by the parties, with the same formalities as this Agreement.
12. **Termination.** Either party may terminate this Agreement with thirty (30) days written notice to the other party. In the event of termination, the Developer shall remain responsible for reimbursing the Town for any and all cost incurred by the Town pursuant to the Conversion Agreement.
13. **Indemnification.** The Developer shall indemnify and hold harmless the Town from any and all claims, damages, or liabilities arising from the Town's obligations under the Conversion Agreement.
14. **Town Attorney Approval.** The Town Attorney has approved the standard, pre-printed terms and conditions set forth in this Agreement as to form and legality. Accordingly, no modification of these terms and conditions shall be binding upon the Town unless they are specifically endorsed and approved by the Town Attorney.
15. **Notices.** All notices required by law and by this Agreement to be given by one party to the other shall be in writing, and the same shall be served by certified mail, return receipt requested, to the following addresses:

Town: Town of Lauderdale-By-The-Sea
 c/o Town Manager
 Town Hall
 4501 Ocean Avenue
 Lauderdale-By-The-Sea, Florida 33308

With a copy to: Town Attorney
 Town Hall
 4501 Ocean Avenue

Lauderdale-By-The-Sea, Florida 33308

Developer: **Kai Stadler**
SkY360 Development, LLC.
218 Commercial Boulevard, Suite 106,
Lauderdale-By-The-Sea, FL 33308

IN WITNESS WHEREOF, Town and Developer have executed this Agreement on the date first set forth above.

DEVELOPER:

Kai Stadler
SkY360 Development. LLC.
218 Commercial Boulevard, Suite 106,
Lauderdale-By-The-Sea, FL 33308

By: _____

Print Name: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by **Kai Stadler** (DEVELOPER), who is (check one) [☐] personally known to me or [☐] has produced _____ as identification by means of physical presence or [☐] online notarization.

Notary Public, State of Florida

My commission expires:

Print or Type Name of Notary Public

TOWN:

TOWN OF LAUDERDALE-BY-THE- SEA a Florida municipal corporation

By: _____
Linda Connors, Town Manager

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024,
by Linda Connors, as Town Manager of Lauderdale-By-The-Sea Florida municipal corporation,
on behalf of the corporation, who is (check one) [☐] personally known to me or [☐] has produced
_____ as identification by means of physical presence or [☐] online
notarization.

Notary Public, State of Florida

My commission expires:

Print or Type Name of Notary Public

ATTEST:

TOWN CLERK

APPROVED AS TO FORM:

TOWN ATTORNEY

Exhibit A

CONVERSION AGREEMENT

EXHIBIT A
CITY/COUNTY RIGHT-OF-WAY
AGREEMENT FOR UNDERGROUND CONVERSIONS

THIS AGREEMENT (the “**Agreement**”) is made and entered into this _____ day of _____, 20____ by and between _____ (“**Local Government**”), a Florida municipal corporation or county with an address of _____ and Florida Power & Light Company (“**FPL**”), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, Local Government has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the “**Conversion**”):

_____ (collectively, the “**Existing Overhead Facilities**”) to underground facilities, including transformers, switch cabinets and other appurtenant facilities some of which may be installed above ground (collectively, the “**Underground Facilities**”) and has further requested that certain of the Underground Facilities be placed in certain of its road rights-of-way (“**Local Government ROW**”) and/or certain road rights-of-way owned by or under the jurisdiction of other agencies (“**Other ROW**”). Local Government ROW and Other ROW may be referred to collectively as “**ROW**”; and

WHEREAS, the Local Government has agreed to pay FPL the cost of such Conversion as required by FPL’s electric tariff and Section 25-6.115 of the Florida Administrative Code and has or will enter into a separate Underground Facilities Conversion Agreement with FPL; and

WHEREAS, FPL is willing, subject to the terms and conditions set forth in this Agreement, FPL’s electric tariff and Section 25-6.115 of the Florida Administrative Code, to place certain of the Underground Facilities in the ROW.

NOW THEREFORE, in recognition of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the parties covenant and agree as follows:

1. The foregoing recitals are true and correct, and are hereby incorporated by reference into this Agreement.

EXHIBIT A

2. Conditions Precedent to Placement of Underground Facilities in ROW

- (a) Local Government covenants, represents and warrants that:
 - (i) Local Government has full legal right and authority to enter into this Agreement;
 - (ii) Local Government has full legal right and authority to take all actions and measures necessary to fulfill Local Government's obligations under this Agreement;
 - (iii) Local Government hereby authorizes the use of the ROW by FPL for the purposes stated herein.
- (b) All applicable permits for FPL to install, construct, or maintain Underground Facilities in ROW must be issued on a timely basis by the appropriate agency, subject to the timely filing for permits by FPL.
- (c) Local Government agrees to provide, at its expense, a legal description that is acceptable to FPL of the ROW to be occupied by the Underground Facilities at a time before FPL initiates the design of the Underground Facilities. Said legal description shall be made part of this Agreement and attached as Exhibit "A".
- (d) FPL agrees to identify and document all existing FPL underground facilities within the ROW that will not be included under this Agreement. Local Government shall reimburse FPL's reasonable costs and expenses to deliver said documentation. Said documentation shall be made part of this Agreement and attached as Exhibit "B".
- (e) FPL warrants that the design of the Underground Facilities to which Local Government has agreed are in compliance with all operational and safety guidelines, codes and standards. FPL and Local Government have mutually agreed upon the location of the facilities within the ROW as per the construction drawings. Said construction drawings shall be attached as Exhibit "C" to this agreement, are part of this agreement, and may be amended to reflect changes to location of facilities as required.

3. Relocation and Rearrangement of FPL Facilities. If the Local Government or other agency with control over the Local Government ROW or Other ROW, for any reason whatsoever, requires that FPL relocate or rearrange, in whole or in part, any Underground Facilities (as they are to exist as a result of this Conversion, or as they may later be modified, upgraded, or otherwise altered) from or within the Local Government ROW or Other ROW, the Local Government, notwithstanding any language to the contrary in any applicable permit or franchise agreement, and prior to any such relocation by FPL, shall provide FPL with a substitute location, satisfactory to FPL, obtain any easements that may be necessary, and shall pay FPL for the costs of any such relocation, adjustment or rearrangement, now or in the future. Local Government shall reimburse FPL for all costs to locate, expose, protect or support the Underground Facilities, whether underground or above ground, in the event of future construction or excavation in close proximity to the Underground Facilities, when such services are required by Local Government or other agency with control over the Local Government

EXHIBIT A

ROW or Other ROW Local Government shall use its best efforts in any design and construction of its future road improvement projects to avoid or mitigate the necessity of relocating or adjusting the Underground Facilities in Local Government ROW and, to the extent reasonably practicable, in Other ROW.

Local Government shall only be responsible for relocation costs associated with replacement facilities conforming to FPL standards in effect at the time of relocation. Any costs associated with the replacement facilities to provide increased capacity, improved reliability, future use facilities, or other such enhancements over and above the FPL standards in effect at the time of the relocation shall not be the responsibility of Local Government.

Nothing herein shall preclude Local Government from obtaining reimbursement for any and all costs requiring FPL to relocate or rearrange any of its Underground Facilities from that entity which initiated the requirement for the relocation or rearrangement of the facilities, excluding only other agencies which own or have jurisdiction over the ROW.

FPL shall be responsible for any and all costs of removal or relocation when such removal or relocation is initiated by FPL. Additionally, FPL agrees that when any portion of a street is excavated by FPL in the location, relocation or repair of any of its facilities when said location, relocation or repair is initiated by FPL, the portion of the street so excavated shall, within a reasonable time and as early as practical after such excavation, be replaced by FPL at its expense in a condition as good as it was at the time of such excavation.

4. **Abandonment or Sale of Local Government ROW.** If the Local Government desires to subsequently abandon or discontinue use of the Local Government ROW, and ownership of the land is transferred to a private party, the Local Government, as a condition of and prior to any such sale, abandonment, or vacation, shall grant FPL an easement satisfactory to FPL for the Underground Facilities then existing within the ROW or require the transferee to so grant FPL an easement satisfactory to FPL at the time of transfer. If ownership of the Local Government ROW is transferred to another public entity, that public entity shall take the ROW subject to the terms and conditions of this Agreement.

5. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities placed in the ROW.

6. **Title and Ownership of Underground Facilities.** Title and ownership of Underground Facilities installed by FPL as a result of this Agreement shall, at all times, remain the property of FPL.

7. **Conversion Outside ROW.** In the event that the FPL Underground Facilities are not, for any reason other than the sole error of FPL or its contractors,

EXHIBIT A

constructed within the ROW, Local Government shall grant or secure, at Local Government's sole cost and expense, new easements or ROW grants for the benefit of FPL for the placement of the Underground Facilities in these areas, and shall secure subordinations of any mortgages affecting these tracts to the interest of FPL. In the alternative, at the discretion of Local Government, Local Government shall reimburse FPL for all costs incurred to remove said facilities which were constructed outside the ROW and for reinstallation within the ROW. FPL shall be responsible at completion of construction for notifying Local Government in writing of FPL's approval and acceptance of the conversion as being constructed within the ROW. Upon acceptance there shall be no further responsibility on the Local Government for relocations referenced in this paragraph.

8. **Agreement Subject to FPL's Electric Tariff.** This Agreement is subject to FPL's electric tariff, including but not limited to the general rules and regulations for electric service and the rules of the Florida Public Service Commission.

9. **Venue; Waiver of Jury Trial.** This Agreement shall be enforceable in _____ County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in _____ County, Florida. By entering into this Agreement, FPL and the Local Government expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

10. **Attorney Fees.** In the event it becomes necessary for either party to institute or defend legal proceedings as a result of the failure of the other party to comply with the terms, covenants, or provisions of this Agreement, each party in such litigation shall bear its own cost and expenses incurred and extended in connection therewith, including, but not limited to attorneys' fees and court costs through all trial and appellate levels.

11. **Assignment.** The Local Government shall not assign this Agreement without the written consent of FPL.

12. **Recording.** This Agreement shall be adopted by the Local Government and maintained in the official records of Local Government for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.

13. **Conflict between Terms of Permit or Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government and FPL, the terms of this Agreement shall control.

EXHIBIT A

14. **Notice.** Any notice, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand delivered, telecopied, sent by Federal Express or a comparable overnight service or by U. S. registered or certified mail, with return receipt requested and postage prepaid to each party at their respective addresses set forth below:

As to Local Government:

With copies to:

As to FPL:

EXHIBIT A

IN WITNESS WHEREOF, Florida Power & Light Company and Local Government have executed this Agreement on the date first set forth above.

For **LOCAL GOVERNMENT:**

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Approved as to Terms and Conditions: _____
(signature/title)

Approved as to Form and Legal Sufficiency: _____
(signature/title)

For **FLORIDA POWER & LIGHT COMPANY**

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)



Agenda Item No: 18.e.

Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Ken Rubach, Deputy Town Manager/Public Works Director

Submitting Department: Administration

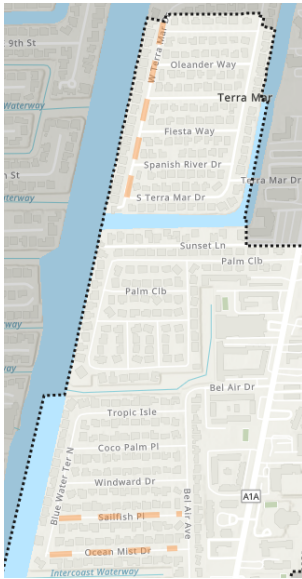
Item Type: Resolution

Agenda Section: RESOLUTIONS – PUBLIC COMMENTS

Subject Title: RESOLUTION 2024-52 - A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PIGGYBACK AGREEMENT WITH JANICE M. RILEY INC. DBA THE PAVING LADY FOR PAVEMENT RESURFACING SERVICES UTILIZING THE TERMS AND CONDITIONS OF THE AVENTURA CONTRACT AWARDED PURSUANT TO INVITATION TO BID NO. 20-03-19-3; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PIGGYBACK AGREEMENT; PROVIDING FOR IMPLEMENTATION AND FOR AN EFFECTIVE DATE.

Explanation: As part of the FY25 Capital Improvement Plan, the Commission authorized staff to initiate a paving program. Utilizing the pavement rating study and visual inspection, staff is recommending the following three roadways be repaved this year:

- Ocean Mist Dr. from Bel Air Ave. to Blue Water Terrace North
- Sailfish Pl. from Bel Air Ave to Blue Water Terrace North
- W. Terra Mar Dr. from S. Terra Mar Dr, to Town Limits (Just north of Cypress Creek Dr.)



The project will include removal and replacement of the existing pavement and re-striping. At West Terra Mar and Seaward Drive, we will also add two catch basins with exfiltration pipe to help address some of the flooding that takes place at the intersection.

Section IV.E of the Town Purchasing Manual authorizes the Town to select and contract using the competitive bid process of another government entity as an exception to the otherwise required formal bidding process. This is considered “piggybacking.” On May 5, 2020, the City of Aventura entered into a contract with The Paving Lady, pursuant to Bid # 20-03-19-3, (the “Aventura Contract”) for maintenance and repair of city streets and facilities (the “Services”). The Aventura Contract is for a three (3) year term, beginning on August 1, 2021, through July 31, 2024, with the option to renew the contract for two (2) additional one (1) year terms. The total cost for the project is \$212,746.49 and is budgeted in the Capital Improvement Fund in account (300-576138-500630) "Roadway Paving and Refurbishment".

Recommendation: Approve Resolution 2024-52, Approving the piggyback agreement with The Paving Lady for pavement resurfacing services, utilizing the City of Aventura Bid #20-03-19-for Maintenance and Repair for City Roads, Streets, and Facilities.

Exhibits:

1. Resolution 2024-52 Approving A Piggyback Agreement With Paving Lady v2

RESOLUTION NO. 2024-52

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PIGGYBACK AGREEMENT WITH JANICE M. RILEY INC. DBA THE PAVING LADY FOR PAVEMENT RESURFACING SERVICES UTILIZING THE TERMS AND CONDITIONS OF THE AVENTURA CONTRACT AWARDED PURSUANT TO INVITATION TO BID NO. 20-03-19-3; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PIGGYBACK AGREEMENT; PROVIDING FOR IMPLEMENTATION AND FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea (the “Town”) desires to obtain pavement resurfacing services to enhance infrastructure within the Town (the “Services”); and

WHEREAS, the City of Aventura (the “City”), entered into an agreement with Janice M. Riley Inc. dba The Paving Lady (the “Contractor”), pursuant to the City’s Invitation to Bid No. 20-03-19-3 for the Services (Exhibit "1" to Exhibit "A"); and

WHEREAS, consistent with the terms and pricing of the Aventura Contract, The Paving Lady has provided the Town with a quote to perform the Services for W Terra Mar Dr, Sailfish Dr and Ocean Mist (the “Project”), in an amount not to exceed \$212,746.49 (the “Quote”, Exhibit "2" to Exhibit "A"); and

WHEREAS, the Town desires to enter into an agreement, in substantially the form attached hereto as Exhibit “A,” with the Contractor utilizing the same or better terms and conditions as the Aventura Agreement (the “Piggyback Agreement”); and

WHEREAS, Section IV.E. “Cooperative Purchasing (Piggybacking)” of the Town’s Purchasing Manual provides that purchases made under the provisions of another government’s purchasing contracts shall be exempt from the competitive bidding requirements provided that certain criteria set forth are all satisfied; and

WHEREAS, Town Staff recommends that the Town Commission approve and authorize the Piggyback Agreement with the Contractor for the Services; and

WHEREAS, in accordance with Section IV.E. of the Town's Purchasing Manual, the Town Commission desires to approve the Piggyback Agreement with the Contractor, in substantially the form attached hereto as Exhibit "A," and authorize the Town Manager to execute the Piggyback Agreement; and

WHEREAS, the Town Commission deems it to be in the best interests of the Town to approve and authorize the Piggyback Agreement with the Contractor, utilizing the Aventura Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

Section 1. Recitals. Each "WHEREAS" clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval of Agreement. The Town Commission hereby approves the Piggyback Agreement with the Contractor for the Services.

Section 3. Authorization to Execute Agreement. The Town Manager is hereby authorized to execute the Piggyback Agreement with the Contractor for the provision of the Services, attached hereto as Exhibit "A," together with such non-substantial changes as are deemed necessary by the Town Manager and approved as to form and legal sufficiency by the Town Attorney.

Section 4. Authorization to Implement. The appropriate Town officials are authorized to execute all necessary documents and to take any necessary action to effectuate the intent of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of _____, 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

**TOWN OF LAUDERDALE-BY-THE-SEA AGREEMENT FOR PAVEMENT RESURFACING IN THE
TOWN
(Piggyback Competitive Award)**

This Agreement is made this ____ day of _____, 2024 (the "Effective Date") between the Town of Lauderdale-By-The-Sea, a municipal corporation organized and existing under the laws of the State of Florida and whose address 4501 North Ocean Drive, Lauderdale-By-The-Sea, FL 33308 (the "Town"), and Janice M. Riley Inc. dba The Paving Lady (the "Contractor"), a Florida corporation, whose address is 792 NE 45 Street, Oakland Park, FL 33334.

WITNESSETH

WHEREAS, the Town wishes to enter into an agreement with Contractor (this "Agreement") for pavement resurfacing services in the Town (the "Services"); and

WHEREAS, the parties wish to incorporate the terms and conditions of the solicitation and contractual arrangement between the City of Aventura, Florida and the Contractor as set forth in the City of Aventura Bid No. 20-03-19-3 for Maintenance and Repair for City Streets and Facilities and resulting agreement dated May 5, 2020, attached hereto and incorporated herein as Exhibit "1" (the "Aventura Contract"); and

WHEREAS, the parties wish to incorporate the terms and conditions of the solicitation and Aventura Contract, except as otherwise modified herein; and

WHEREAS, the Town Procurement Manual authorizes the Town to select and contract through the use of the competitive bid process of another government entity as an exception to the otherwise required formal bidding process; and

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Contract Terms. The terms and conditions of the Aventura Contract, attached hereto as Exhibit "1," is incorporated as though fully set forth herein. In the event of conflict between or among this Agreement and the terms and conditions of the Aventura Contract, the order of priority shall be: this Agreement, and the Aventura Contract.

The following additional provisions are included:

- A. The "Town of Lauderdale-By-The-Sea" and "the Town" shall be deemed substituted for the "City of Aventura" with regard to any and all provisions of the Aventura Contract, including by example, and not limitation, with regard to bond requirements, insurance, indemnification, licensing, termination, default and ownership of documents, which is incorporated herein by this reference. All recitals, representations, and warranties of Contractor made in the Aventura Contract, including Contractor's proposal, are restated as if set forth fully herein, made for the benefit of the Town, and incorporated herein.
- B. The Town shall compensate Contractor pursuant to the rates set forth in the Aventura Contract, in an amount not to exceed budgeted funds for the Services. Payment for the mill, pave, drainage & striping of W Terra Mar Dr, Sailfish Dr and Ocean Mist shall be paid in accordance with the Quote attached hereto as Exhibit "2."
- C. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Broward County, Florida.
- D. Public Records
1. Contractor shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
 2. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
 3. Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
 4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or

created in connection with this Agreement are and shall remain the property of the Town.

5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
6. Any compensation due to Contractor shall be withheld until all records are received as provided herein. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT townclerk@lauderdalebytheseafl.gov, OR BY MAIL: Town Clerk, Town of Lauderdale-By-The-Sea, 4501 Ocean Drive, Lauderdale-By-The Sea, Florida 33308.**

Refusal of the Contractor to comply with the provisions of this Section shall be grounds for immediate termination for cause by the Town of this Agreement.

E. Scrutinized Companies

1. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Town may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.
2. If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Town may immediately terminate this Agreement at its sole option if the Contractor , its affiliates,

or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of this Agreement.

3. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
4. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions, then they shall become inoperative.

F. ETHICS

1. Contractor warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.
2. No officer or employee of the Town, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
3. No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner.
4. Compliance with Applicable Law: Contractor covenants to promptly comply with all applicable federal, state, county, and municipal laws, ordinances, regulations, and rules relating to the Services to be performed hereunder and in effect at the time of performance. Contractor covenants that it will conduct no activity or provide any service that is unlawful or offensive.

G. INSURANCE

Contractor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the Town are named as additional insureds with respect to the required coverage. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the

date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect.

All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Broward County, Florida. The Town may accept coverage carriers having lower Best's ratings upon review of financial information concerning Contractor and the insurance carrier.

Contractor shall maintain in full force and effect throughout the contract the following types and limitations of insurance coverage:

- 1. Comprehensive General Liability Insurance** - \$1,000,000 combined single limit of insurance per occurrence and \$2,000,000 in the general aggregate for Bodily Injury and Property Damage and \$2,000,000 general aggregate for Products/Completed Operations, Comprehensive General Liability insurance shall include endorsements for property damage; personal injury; contractual liability; completed operations; products liability and independent contractors coverage.
- 2. Workers' Compensation Insurance** – Statutory.
- 3. Comprehensive Automobile Liability Insurance** - \$1,000,000 combined single limit of insurance per occurrence for Bodily Injury and Property Damage; \$1,000,000 Hired & Non Owned Auto Liability.

H. INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, whether directly or indirectly, or any way connected with Contractor's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties for work or materials required under or related to this Agreement. Contractor shall reimburse the Town for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, whether directly or indirectly, or in any way connected with Contractor's performance or non-performance of this Agreement. The provisions of this section shall survive termination of this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the Town of any immunity to which it is entitled by law, including but not limited to the Town's sovereign immunity as set forth in Section 768.28, Florida Statutes.

I. NONCOERCIVE CONDUCT AFFIDAVIT.

Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the Contractor acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

J. PROHIBITION ON CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN.

If this contract contemplates the Town giving access to an individual's personal identifying information, then the following applies:

1. Pursuant to Section 287.138, Florida Statutes, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria of Section 287.1838, Florida Statutes. By entering into this Agreement, the Contractor acknowledges that it has read Section 287.138, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

Section 2. Notice. Notice hereunder shall be provided in writing by certified mail, return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies as provided below:

For Town: Town Manager
 Town of Lauderdale-By-The-Sea
 4501 North Ocean Drive
 Lauderdale-By-The-Sea, FL 33308

Copy to: Town Attorney
 Town of Lauderdale-By-The-Sea
 4501 North Ocean Drive
 Lauderdale-By-The-Sea, FL 33308

For Contractor: Mauro Comuzzi
 The Paving Lady

1000 W. Industrial Ave
Boynton Beach, FL 33426

Section 3. Severability. This Agreement sets forth the entire agreement between Contractor and the Town with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

Section 4. Waiver of Jury Trial. The Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in state and or federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Agreement or arising out of, under, or in connection with the services performed hereunder, or any course of conduct, course of dealing, statements or actions or inactions of any party hereto.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

TOWN:

CONTRACTOR:

TOWN OF LAUDERDALE-BY-THE-SEA

JANICE M. RILEY INC. DBA
THE PAVING LACY

Linda Connors, Town Manager

Date: _____

Date: _____

Attest: _____
Katrina Adler, Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney



**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with a governmental entity which would grant the entity access to an individual's personal identifying information.

1. The Paving Lady ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

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

(signature)

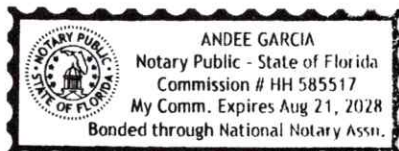
Print Name: Mauro Comuzzi

OATH OR AFFIRMATION

State of Florida

County of Palm Beach

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 28 day of October, 2024, by Mauro Comuzzi
(name of person) as President (type of authority) for The Paving Lady
(name of party on behalf of whom instrument is executed).



Andee Garcia

Notary Public (Print, Stamp, or Type as Commissioned)

- ☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☐ Did take an oath; or
☒ Did not take an oath



**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, I hereby affirm under penalty of perjury that:

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and a governmental entity, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of The Paving Lady, a nongovernmental entity.
3. The Paving Lady does not use coercion for labor or services as defined in the relevant section of the law.

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

(signature)

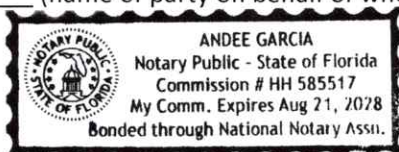
Print Name: Mauro Comuzzi

OATH OR AFFIRMATION

State of Florida

County of Palm Beach

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 28 day of October, 2024, by Mauro Comuzzi
(name of person) as President (type of authority) for The Paving Lady
(name of party on behalf of whom instrument is executed).



Andee Garcia

Notary Public (Print, Stamp, or Type as Commissioned)

- X ☐ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☐ Did take an oath; or
X ☐ Did not take an oath

Noncoercive Conduct for Labor or Services Affidavit



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/27/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown Insurance Services, Inc. 1201 W Cypress Creek Rd Suite 130 Fort Lauderdale FL 33309		CONTACT NAME: PHONE (A/C, No, Ext): (954) 776-2222 FAX (A/C, No): (954) 776-4446 E-MAIL ADDRESS: 053.certs@bbrown.com		
INSURED Janice M. Riley, Inc. dba The Paving Lady Asfalto, Inc. 1000 West Industrial Avenue Boynton Beach FL 33426		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: Brierfield Insurance Company		10993
		INSURER B: FCCI Insurance Company		10178
		INSURER C: National Trust Insurance Company		20141
		INSURER D: Federal Insurance Company		20281
		INSURER E:		
INSURER F:				

COVERAGES**CERTIFICATE NUMBER:** 24/25**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY			GL10005588805	03/28/2024	03/28/2025	EACH OCCURRENCE	\$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 100,000	
			MED EXP (Any one person)				\$ 5,000	
			PERSONAL & ADV INJURY				\$ 1,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
	☐ POLICY ☒ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	OTHER:							\$
B	AUTOMOBILE LIABILITY			CA10005588904	03/28/2024	03/28/2025	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	☒ ANY AUTO		BODILY INJURY (Per person)				\$	
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS		BODILY INJURY (Per accident)				\$	
	☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		PROPERTY DAMAGE (Per accident)				\$	
							PIP	\$ 10,000
C	☒ UMBRELLA LIAB			UMB10005588704	03/28/2024	03/28/2025	EACH OCCURRENCE	\$ 2,000,000
	☐ EXCESS LIAB		AGGREGATE				\$ 2,000,000	
	☐ CLAIMS-MADE						\$	
	DED ☒ RETENTION \$ 10,000							
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC010006805604	03/28/2024	03/28/2025	☒ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y / N					E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
D	Equipment Floater			45469868	03/28/2024	03/28/2025	Leased & Rented	200,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Town of Lauderdale By The Sea is included as Additional Insured with respects to General Liability as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**Town of Lauderdale By The Sea
4501 Ocean Drive

Fort Lauderdale

FL 33308

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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SECTION 00510
NOTICE OF AWARD

TO: Mauro Comuzzi
 President
 Janice M Riley, Inc.
 DBA The Paving Lady
 1000 West Industrial Avenue
 Boynton Beach, FL 33426

September 16, 2020

PROJECT DESCRIPTION: City of Aventura Maintenance and Repair Work for City Roads, Streets and Facilities; Bid No. 20-03-19-3, Resolution No. 2020-28, in accordance Contract Documents as prepared by Kimley-Horn and Associates, Inc.

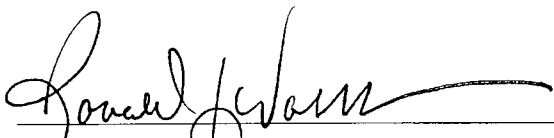
The CITY has considered the Bid submitted by you for the above-described WORK in response to its Advertisement for Bid and Instruction to BIDDERS.

You are hereby notified that your Bid has been accepted for City of Aventura Maintenance and Repair for City Roads, Streets and Facilities; Bid No. 20-03-19-3, Resolution No. 2020-28, based on the attached Schedule of Values.

You are required by the Instruction to BIDDER(s) to execute the Agreement and furnish the required CONTRACTOR'S Performance Bond, Payment Bond and Certificates of Insurance within ten (10) days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within ten (10) days from the date of this Notice, said CITY will be entitled to disqualify the Bid, revoke the award and retain the Bid Security.

BY:



TITLE: CITY MANAGER

Dated this 21 day of September, 2020.

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by

Janice M. Riley Inc. DBA The Paring Lady

On this 9th day of November, 2020

BY: Mauro Comuzzi

TITLE: President

You are required to return an acknowledged copy of this Notice of Award to the CITY.

END OF SECTION



City of Aventura

Government Center
19200 West Country Club Drive
Aventura, Florida 33180

Via Email: mauro@pavinglady.com

ENID WEISMAN
MAYOR

COMMISSIONERS
DENISE LANDMAN
DR. LINDA MARKS
GLADYS MEZRAHI
MARC NAROTSKY
ROBERT SHELLEY
HOWARD WEINBERG

RONALD J. WASSON
CITY MANAGER

September 16, 2020

Mr. Mauro Comuzzi
President
Janice M Riley, Inc.
DBA The Paving Lady
1000 West Industrial Avenue
Boynton Beach, FL 33426

**Re: Agreement for City of Aventura Maintenance and Repair for the City Roads,
Streets and Facilities – Bid #20-03-19-3, Resolution No. 2020-28**

Dear Mr. Comuzzi:

As you are aware, on Tuesday, May 5th, 2020, the City Commission adopted a resolution awarding a multi-vendor contract and authorizing an agreement between the City of Aventura (City) and Stone Concept Miami, Inc., Metro Express, Inc., Janice M Riley Inc, dba The Paving Lady, Weekley Asphalt Paving, Inc. and M&M Asphalt Maintenance, Inc. dba All County Paving, for City of Aventura for Maintenance and Repair Work for City Roads, Streets and Facilities under Bid number 20-03-19-3. As a result, we have enclosed two (2) original copies of an agreement pursuant to the award and requirements of the Bid.

Please print and execute two (2) copies of the agreement and return them to me for the City's execution. Please note that the effective date for commencement of this agreement is June 14, 2020. In addition, as required by the Bid and your submittal, please provide the following documents along with the executed agreements:

1. A payment and performance bond in the amount of \$50,000 from a surety company, meeting the requirements of Section 00612 and Section 00614 and Certificate of Insurance.

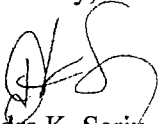
Please forward all of the above documents to me by Tuesday, September 29th, 2020. Upon my review for completeness and accuracy, I will forward the agreements to the City Manager for his execution. One (1) fully-executed copy of the agreement will be returned to you for your records.

PHONE: 305-466-8900 • FAX: 305-466-8939
www.cityofaventura.com

As per the contract, the City reserves the right in the event that the contractor cannot provide an item(s) or service(s) in a timely manner as requested, that the City reserves the right to seek and obtain other sources without thereby violating the intent of the contract.

If you should have any questions regarding this letter, please call me at (305) 466-8925.

Sincerely,

A handwritten signature in black ink, appearing to be 'IS' with a stylized flourish.

Indra K. Sarju, CPPB
Purchasing Agent

cc: Ronald J. Wasson, City Manager
Joseph Kroll, Public Works/Transportation Director
Ellisa L. Horvath, City Clerk

AGREEMENT

SECTION 00526

AGREEMENT

THIS AGREEMENT, made and entered into on this 5th day of May, 2020, by and between **Janice M Riley, Inc., DBA The Paving Lady**; Party of the First Part, and The **City of Aventura**, Party of the Second Part:

WITNESSETH:

That, the First Party, for the consideration hereinafter fully set out, hereby agrees with the Second Party as follows:

1. That the First Party shall furnish all the materials, and perform all of the Work in manner and form as provided by the following enumerated Drawings, Specifications, and Documents, which are attached hereto and made a part hereof, as if fully contained here:

Advertisements For Bids	Section	00100
Instruction To Bidder	Section	00210
Bid Form	Section	00410
Award Preference for Identical Tie Bids	Section	00420
Bidder Qualification Statement	Section	00450
Non - Collusion Affidavit	Section	00454
Sworn Statement Pursuant To Florida Statutes On Public Crimes	Section	00456
Notice Of Award	Section	00510
Agreement	Section	00526
Payment Bond	Section	00612
Performance Bond	Section	00614
OSHA Acknowledgment	Section	00620
General Conditions	Section	00710
Supplementary Conditions	Section	00810

Technical Specifications

Sections

01000 to 02930

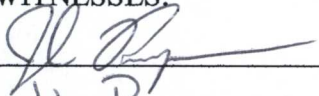
Supplementary Technical Specifications

As Referred To:

2. That the First Party shall commence the Work to be performed under this Agreement on a date to be specified in a written order of the Second Party and shall complete all Work hereunder within the length of time stipulated in the Bid.
3. That the Second Party hereby agrees to pay to the First Party for the faithful performance of this Agreement in accordance with the unit pricing provided in the Bid Form in lawful money of the United States.:
4. That the Second Party shall make monthly partial payments to the First Party on the basis of a duly certified and approved estimate of Work performed during each calendar month by the First Party, Less the retainage provided in the General Conditions, which is to be withheld by the Second Party until Work within a particular part has been performed in accordance with this Agreement and until such Work has been accepted by the Second Party.
5. That upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills, and other costs incurred by the First Party in connection with the construction of the Work have been paid in full, final payment on account of this Agreement shall be made within 60 days after the completion by the First Party of all Work covered by this Agreement and the acceptance of such Work by the Second Party.
6. In the event that the Contractor shall fail to complete the Work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of One Thousand and 00/100 Dollars (\$1000.00) per day, plus any monies paid by the City to the Consultant for additional engineering and inspection services associated with such delay.
7. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Second Party shall deem the Surety or Sureties upon such bond to be unsatisfactory, or if, for any reason such bond ceases to be adequate to cover the performance of the Work, the First Party shall, at its expense within 5 days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Second Party. In such event, no further payment to the First Party shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the Second Party.
8. No additional Work or extras shall be done unless the same shall be duly authorized by appropriate action by the Party of the Second Part.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

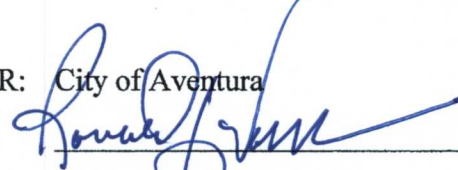
WITNESSES:


John Provenzano

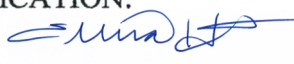
CONTRACTOR: Janice M Riley Inc dba The Paving Lady

BY: M. Mauro Panny
NAME: MAURO COMULI
TITLE: President

OWNER: City of Aventura

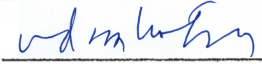
BY: 
NAME: Ronald J. Wasson
TITLE: CITY MANAGER

AUTHENTICATION:

BY: 
NAME: Ellisa L. Horvath
TITLE: CITY CLERK



APPROVED AS TO FORM:

BY: 
NAME: _____
TITLE: CITY ATTORNEY

END OF SECTION

00526 - 3

BONDS and CERTIFICATES

**This is the *front page* of the performance/payment bond issued in compliance with
Florida Statute Chapter 255.05**

Surety Name: United States Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07960
973-490-6600

Bond Number: 602-127645-3

Contractor Name: Janice M Riley Inc_Paving Lady
1000 West Industrial Avenue
Boynton Beach, FL 33426
(561)572-2600

Owner Name: City of Aventura
19200 West Country Club Drive
Aventura, FL 33180

Project Number: Bid #20-03-19-3, Resolution No. 2020-28

Project Description: City of Aventura Maintenance and Repair for the City Roads
Streets and Facilities

Project Address: City of Aventura

Legal Description of Property: City of Aventura Maintenance and Repair for the
City Roads Streets and Facilities

**This is the *front page* of the bond. All other pages are subsequent regardless of the
pre-printed numbers.**

FORM OF PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That, pursuant to the requirements of Florida Statute 255.05, we, **Janice M Riley, Inc. dba The Paving Lady, Inc.**, as Principal, hereinafter called Contractor, and **United States Fire Insurance Company**, as Surety, are bound to the City of Aventura, Florida, as Obligee, hereinafter called City, in the amount of Fifty thousand and zero cents Dollars (\$ 50,000.00) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: 20-03-19-3, Resolution No. 2020-28, awarded on the 5th of May, 2020, with City of Aventura for City of Aventura Maintenance and Repair Work for City Roads, Streets and Facilities, in accordance with drawings (plans) and specifications prepared by Kimley-Horn and Associates, Inc. which Contract is by reference made a part hereof, and is hereafter referred to as the Contract;

THE CONDITION OF THIS BOND is that if the Contractor:

1. Indemnifies and pays City all losses, damages (specifically including, but not limited to, damages for delay and other consequential damages caused by or arising out of the acts, omissions or negligence of Contractor), expenses, costs and attorney's fees including attorney's fees incurred in appellate proceedings, that City sustains because of default by Contractor under the Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) supplying Contractor with all labor, materials and supplies used directly or indirectly by Contractor in the prosecution of the Work provided for in the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect subject, however, to the following conditions:
 - 2.1 A claimant, except a laborer, who is not in privity with the Contractor and who has not received payment for their labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the Work, furnish to the Contractor a notice that they intend to look to the Bond for protection.
 - 2.2 A claimant who is not in privity with the Contractor and who has not received payment for their labor, materials, or supplies shall, within ninety (90) days after performance of the labor, or after complete delivery of the materials or supplies, deliver to the Contractor and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the non-payment.
 - 2.3 No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding paragraphs 2.1 and 2.2 have been given.

2.4 Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect the Surety's obligation under this Bond.

Signed and sealed this 12th day of November, 2020.

WITNESS:

Janice M Riley, Inc. DBA The Paving Lady

(Name of Corporation)

Mauro Comuzzi
Secretary

(CORPORATE SEAL)

By: *Mauro Comuzzi*
(Signature and Title)

NAURO COMUZZI President

(Type Name and Title signed above)

IN THE PRESENCE OF;

TH
W. Murphy

INSURANCE COMPANY: United States Fire Insurance Company

By: *James F. Murphy*
*Agent and Attorney-in-Fact James F. Murphy

Address: _____

(Street) 305 Madison Avenue

(City/State/Zip Code) Morristown, NJ

Telephone No.: (973) 490-6600



* (Power of Attorney must be attached)

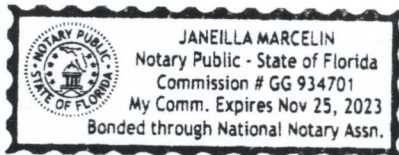
State of Florida

County of Palm Beach

On this, the 12 day of Nov., 20 20, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by Mauro Camuzzi (name of corporate officer), President (title), of Stanley Building (name of corporation), a S (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand

and official seal



Florida

Notary Public, State of

Janeilla Marcelin

Printed, typed or stamped name of Notary Public exactly as commissioned

☒ Personally known to me, or

☐ Produced identification:

(type of identification produced)

☐ Did take an oath, or

☒ Did not take an oath

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, MAURO COMUZZI, certify that I am the Secretary of the corporation named as Principal in the foregoing Payment Bond; that MAURO COMUZZI, who signed the Bond on behalf of the Principal, was then President of said corporation; that I know his/her their signature; and his/her their signature thereto is genuine; and that said Bond was duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

(CORPORATE SEAL)

Janice M Riley
Janice M Riley, Inc. DBA The Paving Lady

(Name of Corporation)

END OF SECTION

FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, pursuant to the requirements of Florida Statute 255.05, **we, Janice M Riley, Inc. dba The Paving Lady, Inc.**, as Principal, hereinafter called Contractor, and United States Fire Insurance Company, as Surety, are bound to the City of Aventura, Florida, as Obligee, hereinafter called City, in the amount of Fifty thousand and zero cents Dollars (\$ 50,000.00) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: 20-03-19-3, Resolution No. 2020-28, awarded on the 5th day of May, 2020, with City of Aventura for the **City of Aventura Maintenance and Repair Work for City Roads, Streets and Facilities**; in accordance with drawings (plans) and specifications prepared by Kimley-Horn and Associates, Inc. which Contract is by reference made a part hereof, and is hereafter referred to as the Contract;

THE CONDITION OF THIS BOND is that if the Contractor:

1. Fully performs the Contract between the Contractor and the City for construction of City of Aventura Maintenance and Repair Work for City Roads, Streets and Facilities, Bid No. 17-04-25-2 within the specified number of calendar days for each individual work item after the date of Contract commencement as specified in the Notice to Proceed and in the manner prescribed in the Contract; and
2. Indemnifies and pays City all losses, damages (specifically including, but not limited to, damages for delay and other consequential damages caused by or arising out of the acts, omissions or negligence of Contractor), expenses, costs and attorney's fees including attorney's fees incurred in appellate proceedings, that City sustains because of default by Contractor under the Contract; and
3. Upon notification by the City, corrects any and all defective or faulty Work or materials which appear within one and one half (1 and 1/2) year, and;
4. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract, then this Bond is void, otherwise it remains in full force.

Whenever Contractor shall be, and declared by City to be, in default under the Contract, the City having performed City's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 4.1 Complete the Contract in accordance with its terms and conditions; or
- 4.2 Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the best, lowest, qualified, responsible and responsive BIDDER, or, if the City elects, upon determination by the City, and Surety jointly of the best, lowest, qualified, responsible and responsive BIDDER, arrange for a

Contract between such BIDDER and City, and make available as Work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price." as used in this paragraph, shall mean the total amount payable by City to Contractor under the Contract and any amendments thereto, less the amount properly paid by City to Contractor.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the City named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.

Signed and sealed this 12th day of November, 20 20.

WITNESSES:

Janice M Riley, Inc. DBA The Paving Lady

(Name of Corporation)

By:

Mauro Comuzzi
(Signature and Title)

Secretary

(CORPORATE SEAL)

MAURO COMUZZI Pres.

(Types Name and Title signed above)

IN THE PRESENCE OF:

TH
W. Murphy

INSURANCE COMPANY: United States Fire Insurance Company

By:

*(Agent and Attorney-in-Fact) James F. Murphy

Address:

(Street) 305 Madison Avenue

Morristown, NJ

City/State/Zip Code

Telephone No.: (973) 490-6600

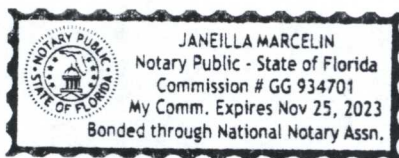


* (Power of Attorney must be attached)

State of Florida
County of _____

On this, the 12 day of Nov., 20 20, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by Mauro Conuzzi (name of corporate officer), President (title), of Janice M. Filley, Inc. (name of corporation), a (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand
and official seal



Florida
Notary Public, State of

Janeilla Marcelin
Printed, typed or stamped name of Notary Public
exactly as commissioned

- ☒ Personally known to me, or
☐ Produced identification:

(type of identification produced)

- ☐ Did take an oath, or
☒ Did not take an oath

Bonded by: United States Fire Insurance Company

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, MAURO COMVZI, certify that I am the secretary of the corporation named as principal in the foregoing Performance Bond; that MAURO COMVZI, who signed the Bond on behalf of the Principal, was then President of said corporation; that I know his/her/their signature; and his/her/their signature thereto is genuine; and that said Bond was duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

(CORPORATE SEAL) _____

Janice M Riley, Inc. DBA The Paving Lady

Mauro Comvzi

(Name of Corporation)

END OF SECTION

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

24178429920

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Michael A. Holmes, James Murphy, Layne Holmes

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Seven Million, Five Hundred Thousand Dollars (\$7,500,000).**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2021.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 22nd day of August 2019.

UNITED STATES FIRE INSURANCE COMPANY



ASR

Anthony R. Slimowicz, Executive Vice President

State of Pennsylvania }
County of Philadelphia }

On this 22nd day of August 2019, before me, a Notary public of the State of Pennsylvania, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

**Commonwealth of Pennsylvania – Notary Seal
Tamara Watkins, Notary Public
Philadelphia County
My commission expires August 22, 2023
Commission number 1348843**

Tamara Watkins

Tamara Watkins

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 12 day of Nov²⁰

UNITED STATES FIRE INSURANCE COMPANY

Al Wright

Al Wright, Senior Vice President



SECTION 00620

ACKNOWLEDGMENT OF CONFORMANCE
WITH OSHA STANDARDS

TO The City of Aventura

We JRT Concrete ; C+R Milling, hereby acknowledge and Janice M Riley, Inc. dba The Paving Lady, agree that as Contractors
(Prime Contractor)

For **City of Aventura Maintenance and Repair for City Roads, Streets and Facilities**, Bid No. 20-03-19-3, as specified, have the sole responsibility for compliance with all the requirements of the Federal Occupational Safety and Health Act of 1970, and all State and local safety and health regulations, and agree to indemnify and hold harmless the City of Aventura and Kimley-Horn and Associates, Inc., and against any and all liability, claims, damages losses and expenses they may incur due to the failure of

JRT Concrete
C+R Milling
(Subcontractor's Names)

to comply with such act or regulation.

Janice M Riley
CONTRACTOR
Janice M Riley Inc dba The Paving Lady
ATTEST: _____

END OF SECTION



October 30, 2024

1000 W Industrial Ave
 Boynton Beach FL 33426
 Office: 561-572-2600
 Fax: 561-572-2601

Attention:

Ken Rubach
LBTS Deputy Town Manager

Project:

Mill, Pave, Drainage & Striping W Terra Mar Dr, Sailfish Dr and Ocean Mist

Pricing is based on Unit Price Bid No. 22-08-11-3 unit pricing.

Break Down as per Unit Price Contract:

PAY ITEM	DESCRIPTION	QNTY	UNITS	RATE	TOTAL
7	Type I barricade	65	EA	\$24.00	\$1,560.00
33	2" Limerock Base including prime coat	788	SY	\$8.00	\$6,304.00
45	Mill Existing pavement 1"	8011	SY	\$3.45	\$27,637.95
41	Install 1.5" SP 9.5 asphalt	621	TN	\$160.00	\$99,360.00
90	Install 30" HDPE with bedding 4'x4' Exfil trench	31	LF	\$795.00	\$24,645.00
108	Install 48" TYPE C Basin	1	EA	\$24,000.00	\$24,000.00
157	24" white Thermo	72	LF	\$7.50	\$540.00
153	Solid Yellow 6" Thermo	500	LF	\$1.90	\$950.00
				SUB TOTAL	\$184,996.95
4	GENERAL CONDITIONS & MOB			15%	\$27,749.54
				TOTAL	\$212,746.49

Notes:

*** Jobsite will be barricaded during work. This contractor will not be responsible for persons breaking through the barricades, tracking sealer, damage or injury to cars or persons trespassing designated areas.
 *** Contractor is not responsible for any pre-existing environmental conditions or subsurface conditions.
 *** This proposal is based on work being completed on Mon - Friday 7 am - 7 pm.
 *** Any changes in the scope of work for any items not specified in this proposal will be an extra to this contract at contract unit prices.



October 30, 2024

1000 W Industrial Ave
Boynton Beach FL 33426
Office: 561-572-2600
Fax: 561-572-2601

*** All testing, as-builts, plans, and surveying is by owner.
*** Contractor not responsible for existing asphalt drainage or standing water problems.
*** Any additional work requested by owner and/or the building department during review or inspections will be priced accordingly.
*** Permits will be obtained by contractor. Permit fees and procurement fees are to be paid by owner once permit is issued.

WE PROPOSE to furnish labor and material - complete in accordance with above specifications, and subject to conditions stated herein, for the sum of: **\$212,746.49 (Two hundred twelve thousand, seven hundred forty-six dollars and forty-nine cents)**

PAYMENTS TO BE MADE AS Follows: - balance upon completion

Accepted: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature: _____

Date: _____

Print Name: _____

Title: _____

All material is guaranteed to be as specified. There shall be a one year guarantee against peeling or flaking of sealcoat material, except that as applied on cracks and oil stains All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Our workers are covered by Workmen's Compensation Insurance.

X Mauro Comuzzi – President

Date: _____



Town Commission Agenda Item Report

Meeting Date: November 12, 2024

Submitted By: Ken Rubach, Deputy Town Manager/Public Works Director

Submitting Department: Administration

Item Type: Resolution

Agenda Section: RESOLUTIONS – PUBLIC COMMENTS

Subject Title: Continuing Professional Services Contracts

RESOLUTION 2024-53: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH FLYNN ENGINEERING SERVICES, P.A. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-54: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH BAXTER & WOODMAN, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-55: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING, LANDSCAPE ARCHITECTURE, AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-56: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CAULFIELD & WHEELER, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING, LANDSCAPE ARCHITECTURE, SURVEY AND MAPPING, AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-57: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CARNAHAN, PROCTOR AND CROSS, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING, LANDSCAPE ARCHITECTURE, SURVEY AND MAPPING, AND TRAFFIC ENGINEERING SERVICES;

PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-58: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WALTERS ZACKRIA ASSOCIATES, PLLC PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ARCHITECTURE SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

RESOLUTION 2024-59: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HITCHCOCK DESIGN GROUP INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL LANDSCAPE ARCHITECTURE SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

Explanation: In accordance with Florida Statute 287.055, the Consultants' Competitive Negotiation Act (CCNA), the Town issued a Request for Qualifications ("RFQ") on July 24, 2024, seeking qualified firms for professional services in the areas of architecture, landscape architecture, professional engineering, traffic engineering, and registered survey and mapping services, as may be needed from time to time for upcoming Town projects. The Town received 15 responses, 12 of which were qualified responses. The RFQ committee analyzed the responses and scored the firms based on the criteria laid out within the RFQ. At the meeting on September 18, 2024, the Commission authorized the Town Manager to negotiate contracts with the top seven ranked firms (listed in the chart below) across each professional discipline.

It is important to note that the nature of these continuing contracts for services under CCNA is that no specific services are being requested or approved at this time. Rather, this action creates the agreements and approves the use of the listed consultants for the listed purposes in accordance with their quotes. Individual projects using their services will generally be approved by the issuance of Work Authorizations. Work Authorizations will either have to be in conformance with the 2024/25 budget or require a budget amendment. They may also need to be brought back for Commission approval if their value exceeds the Town Manager's purchasing authority as established by the Commission in the Purchasing Manual.

The negotiated contract with each consultant provides the following terms:

1. A five-year term with two, two-year optional renewal periods;
2. Prices will be subject to a yearly CPI increase or 5% whichever is lower.
3. The consultants will be paid an hourly rate for any work that is performed for Town projects. If no work is done, no expenses are incurred.
4. Hourly rates per firm per position.

Staff recommends that the Commission approve the Resolutions authorizing continuing professional services agreements with each consultant listed in the chart below. These agreements will enable the Town to secure professional services as required for future projects.

The chart below summarizes the Resolution Number, Firm Name, Discipline/Area of

Qualification, and Score/Ranking achieved during the RFQ process.

Resolution Number	Firm Name	Discipline/Area of Qualification	Score Total
2024-53	Flynn	Professional Engineering	295
2024-54	Baxter & Woodman	Professional Engineering, Traffic Engineering	293
2024-55	Kimley-Horn	Landscape Architecture, Professional Engineering, Traffic Engineering	283
2024-56	Caulfield & Wheeler	Landscape Architecture, Professional Engineering, Survey and Mapping, Traffic Engineering	275
2024-57	Carnahan, Proctor, and Cross	Landscape Architecture, Professional Engineering, Survey and Mapping, Traffic Engineering	275
2024-58	Walters Zackria	Architecture	275
2024-59	Hitchcock Design Group	Landscape Architecture	270

The Town was successful in having each consultant follow its updated and approved form of contract for CCNA services. You saw a version of this form when you recently approved the Town Engineer services for Flynn Engineering; some of the particulars are different for the Town Engineer role, but the overall form is similar.

Therefore, as you review this composite item, what varies is (1) the description of the services that each consultant is being awarded in the Resolution and in the Agreement, (2) Exhibit A to each agreement, containing the price quotes for each consultant, and (3) the statutorily required affidavits and the insurance certificates from each consultant.

Recommendation: Approve Resolutions 2024-53, 2024-54, 2024-55, 2024-56, 2024-57, 2024-58, and 2024-59. While the discussion and public comment of this item can be combined, the Commission will need to approve each Resolution individually.

Exhibits:

1. Resolution 2024-53-Flynn-CCNA PSA
2. Resolution 2024-54-Baxter Woodman-CCNA PSA
3. Resolution 2024-55-Kimley Horn-CCNA PSA
4. Resolution 2024-56-Caulfield Wheeler-CCNA PSA
5. Resolution 2024-57-Carnahan Proctor Cross-CCNA PSA
6. Resolution 2024-58-Walters Zackria-CCNA PSA
7. Resolution 2024-59-Hitchcock Design Group-CCNA PSA

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A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH FLYNN ENGINEERING SERVICES, P.A. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

WHEREAS, on July 24, 2024, the Town of Lauderdale-By-The-Sea (the “Town”) issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects, in accordance with Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (CCNA) (the “Services”); and

WHEREAS, fifteen sealed responses were received by the RFQ deadline, and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39, which approved the rankings of respondents to the RFQ and authorized the Town Manager to negotiate a continuing professional services agreement with the top seven ranked qualified firms, including Flynn Engineering Services, P.A. (the “Consultant”) for professional engineering services (the “Services”); and

WHEREAS, the Town Manager has negotiated the agreement attached hereto as Exhibit “1” (the “Agreement”) with the Consultant for the Services and the Town Commission wishes to approve the Agreement; and

WHEREAS, the Town Commission finds that it is in the best interests of the Town to proceed as indicated in this Resolution and approve the Agreement with the Consultant for the Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval. The Town Commission hereby approves the Agreement with the Consultant for the Services.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with the Consultant, in substantially the form attached hereto as Exhibit 1, subject to the final approval of the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of November 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT 1

CONTINUING PROFESSIONAL SERVICES AGREEMENT BETWEEN TOWN OF LAUDERDALE-BY-THE-SEA AND FLYNN ENGINEERING SERVICES, P.A.

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation (the “TOWN”) and Flynn Engineering Services, P.A., a Florida profit corporation (the “CONSULTANT”).

WHEREAS, pursuant to Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (“CCNA”), on July 24, 2024, the TOWN issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects; and

WHEREAS, in response to the RFQ, the Consultant submitted its qualifications (the “Qualifications,” which are incorporated herein by reference) for professional engineering services (the “Services,” as herein defined); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39 selecting the CONSULTANT as one of the top-ranked firms to perform the Services and authorized the Town Manager to negotiate and execute a contract with the CONSULTANT; and

WHEREAS, the TOWN and CONSULTANT, through mutual negotiation, have agreed upon a rate schedule as set forth in **Exhibit A** (the “Rate Schedule”) in connection with the Services; and

WHEREAS, the CONSULTANT will perform the Services for the TOWN, as further described in **Exhibit B** attached hereto, on an as-requested, per-project basis; and

WHEREAS, the TOWN desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Additional definitions provided for in the RFQ are also incorporated herein.

- 2.1 **Contract Documents** refers to this Agreement, the Request for Qualifications No. 24-07-01 RFQ), incorporated herein by reference, CONSULTANT's response to the RFQ, incorporated herein by reference, all specifications, Certificate(s) of Insurance, Work Authorizations and all written amendments issued on or after the effective date of this Agreement.
- 2.2 **Compensation** means the total amount paid by the TOWN for the CONSULTANT's professional services pursuant to an executed Work Authorization, exclusive of Reimbursable Expenses.
- 2.3 **Reimbursable Expenses** means the expenses directly attributable to the Work Authorization that are not Compensation in the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONSULTANT. Reimbursable Expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified the Work Authorization; travel expenses as provided in Paragraph 3.4 of this Agreement. Travel Expenses are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager.
- 2.4 **Subcontractor Fee** means the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.
- 2.5 **Work Authorization** means the document issued by TOWN to a CONSULTANT authorizing a specific scope of services, the Compensation to be paid, the time frame to complete the work and other project specific details.

SECTION 3. WORK AUTHORIZATIONS; SCOPE OF SERVICES; COMPENSATION

- 3.1 In accordance with the CCNA, the CONSULTANT shall provide professional services to the TOWN for projects that are specified in Work Authorizations that may be approved from time to time by either the Town Commission or Town Manager as authorized by this Section 3. The TOWN reserves the right to select one or more firms to perform any specific project.
- 3.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONSULTANT for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide such professional services. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 3.3 (a) through (g). The Town Manager or designated representative and CONSULTANT shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 3. Each Work Authorization shall incorporate this Agreement by reference.

- 3.3 The TOWN and CONSULTANT shall utilize a supplemental agreement referred to as a Work Authorization which will, by mutual agreement, set forth, among other things, the following:
- a. The Scope of Services;
 - b. The tasks to be performed, including any deliverables;
 - c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
 - d. The amount and type of Compensation requested and the proposed payment schedule;
 - e. The CONSULTANT's Project Manager and any subcontractors assigned to the Work Authorization;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
 - g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.
- 3.4 Upon the completion of each task assigned to CONSULTANT, CONSULTANT shall provide the applicable records to TOWN. All documents including, but not limited to, electronic files, drawings and specifications prepared in connection with the project.
- 3.5 CONSULTANT acknowledges that TOWN and CONSULTANT shall establish mutually agreeable performance standards to evaluate CONSULTANT's performance based upon responsiveness, quality of work, turn around time for the completion of required work and other standards agreed to by the parties. CONSULTANT and TOWN'S Director of Development Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.6 The TOWN agrees to compensate CONSULTANT for services rendered on an hourly basis in accordance with the rates shown in **Exhibit A**. The hourly rates set forth in **Exhibit A** shall be subject to an annual increase based on the Consumer Price Index (CPI) or 5%, whichever is lower.
- 3.7 Each Work Authorization shall specify whether compensation will be on an hourly basis or lump sum, with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.
- 3.8 Travel Expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.
- 3.9 CONSULTANT will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and the percentage of the Work Authorization completed. Within 10 days after receipt of the invoice, the Town shall notify

CONSULTANT, in writing, of any discrepancies or disputed items on the invoice and indicate what corrective action on the part of the CONSULTANT is needed to make the invoice proper. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONSULTANT. The TOWN shall pay the CONSULTANT the undisputed portion of the invoice within thirty (30) days of receipt of the invoice.

- 3.10 If a dispute arises concerning payment of an invoice, the Town Manager or designee shall commence proceedings to resolve the dispute within thirty (30) days after receipt of the invoice. The Town Manager shall make a final determination regarding any disputed portion of the invoice within forty-five (45) days of receipt of the invoice during which time the Town Manager or designee shall meet with the CONSULTANT to seek resolution of the disputed invoice.
- 3.11 The professional services to be rendered by the CONSULTANT shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONSULTANT prior to execution of a Work Authorization shall be at CONSULTANT's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.
- 3.12 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONSULTANT'S services do not exceed \$25,000.00. Any services exceeding \$25,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.
- 3.13 In the event that a Work Authorization for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONSULTANT, at no additional cost to the TOWN, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

SECTION 4. TERM/TERMINATION

- 4.1 **Term of Agreement.** This Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for a period of five years, unless terminated earlier pursuant to this Agreement. At the TOWN's option, this Agreement may be renewed for two successive two-year renewal terms under the same terms and conditions if mutually agreeable to the parties.
- 4.2 **Termination For Convenience.** The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, upon thirty (30) calendar days' written notice to CONSULTANT. If any such termination notice is provided by the TOWN, the CONSULTANT shall immediately cease work on any Work Authorizations

issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT for work completed pursuant to this Agreement to the satisfaction of the TOWN, its reasonable documented costs actually incurred as of the date of the termination notice. Under no circumstances shall the TOWN make payment of profit for services that have not been performed.

- 4.3 **Termination For Cause.** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify and hold the TOWN harmless against any loss pertaining to such termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 4.2 and the provisions of Section 4.2 shall apply.
- 4.4 **Non-Exclusive Agreement.** Notwithstanding the provisions of this Agreement, the Town Manager may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.
- 4.5 **Town Right to Extend.** At the sole discretion of the Town Manager, this Agreement may be extended for a period of up to one hundred fifty (150) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the Town Manager to be in the best interest of the Town. Extensions beyond one hundred fifty (150) days must be approved by the Town Commission.

SECTION 5. CHANGES TO WORK AUTHORIZATIONS

- 5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Authorization consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by a Work Authorization Amendment without invalidating the Work Authorization. Such changes must be contained in a written Work Authorization Amendment executed by the parties in accordance with the provisions of this Agreement, prior to any deviation from the terms of the Work Authorization, including the initiation of any extra work. The Compensation and/or the Completion time may be changed only by Work Authorization Amendment.
- 5.2 **Work Authorization Amendment Defined.** A Work Authorization Amendment shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. A

Work Authorization shall only be modified by an executed Work Authorization Amendment or the issuance of a new Work Authorization.

- 5.3 **Effect of Executed Work Authorization Amendment.** The execution of a Work Authorization Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT and the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. The CONSULTANT, by executing the Work Authorization Amendment, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Authorization Amendment. The CONSULTANT agrees that no claim for delay damages shall be asserted against the TOWN and hereby waives the right to assert any such claim.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

- 7.1 TOWN shall assist CONSULTANT by providing CONSULTANT with available information that is pertinent to the Work Authorization as may be requested in writing by the CONSULTANT and allow reasonable access to pertinent information relating to the services to be performed by CONSULTANT.
- 7.2 TOWN shall provide CONSULTANT access to TOWN property as required for CONSULTANT to perform services under this Agreement or any Work Authorization.

SECTION 8. PROFESSIONAL CONDUCT; CONFLICT OF INTEREST

- 8.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.
- 8.2 CONSULTANT warrants and represents that it shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and Broward County Code of Ethics (County Code Section 1-19), as they may be amended from time to time.

- 8.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 8.4 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
- 8.5 During the term of this Agreement, CONSULTANT agrees not to accept representation of another client that is regulated by or requires development approval from the TOWN or has interests that are directly adverse to TOWN'S interest.
- 8.6 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

- 9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or services provided under this Agreement or any Work Authorization and shall not engage in or commit any discriminatory practice against any person based on race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery in the performance of work under this Agreement or a Work Authorization.
- 9.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

- 10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to this Agreement and any Work Authorization shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within 10 calendar days after written notice requesting delivery of such documents. In no event shall the CONSULTANT use, or permit to be used, any of the documents, without the TOWN'S prior written authorization.
- 10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for a Work Authorization

shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

- 10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.
- 10.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 11. RECORDS/AUDITS

- 11.1 CONSULTANT shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Work Authorization and any work performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Work Authorization or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.
- 11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
 - a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TOWN.
 - b. Upon request from the TOWN's custodian of public records, CONSULTANT shall provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the TOWN.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the Town Manager, at no cost to the TOWN, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the Town in a format that is compatible with the TOWN's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-640-4200, TOWNCLERK@LAUDERDALEBYTHESEA-FL.GOV, OR BY MAIL: TOWN CLERK, 4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 12. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement and any Work Authorizations. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

- 14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld in the TOWN's sole discretion.
- 14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

- 15.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, or costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Authorization.
- 15.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement and each Work Authorization for the above hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15.
- 15.3 Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section 15 shall survive termination of this Agreement.

SECTION 16. INSURANCE

- 16.1 The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The insurance coverage shall be primary insurance with respect to the

CONSULTANT, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The following minimum insurance coverage requirements shall apply on a per project basis:

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONSULTANT shall be allowed to provide services pursuant to this RFQ who is not covered by Worker's Compensation insurance.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONSULTANT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non-Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.
- c. **Comprehensive General Liability:** This insurance shall be written on a "per occurrence" basis only in comprehensive form and shall protect the TOWN and the CONSULTANT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, or \$1,000,000 per occurrence/\$2,000,000 general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage. Defense Costs must be 'outside the limits' of liability.
- d. **Professional Liability:** \$1,000,000 per incident. If coverage is written on a claims-made form, the retroactive date of coverage shall be no later than the inception date of the claims made coverage, unless the prior act policy was extended indefinitely to cover prior period acts. Provisions shall be made to provide coverage beyond the policy year, when necessary. Defense Costs must be 'outside the limits' of liability.

At the Town's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

- e. **Certificate of Insurance:** Concurrent with the execution of this Agreement and prior to the execution of a Work Authorization, the CONSULTANT shall provide the TOWN an original Certificate of Insurance documenting compliance with each required insurance policy. The TOWN is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONSULTANT resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- **Completed Operations** & CG 20 10 04 13 Additional Insured-owners, lessees or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the Town Manager, in the Town Manager's sole discretion.

CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- 16.2 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.
- 16.3 Insurance carriers providing the insurance required by this Agreement or any Work Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the Town shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.
- 16.4 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

- 17.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.
- 17.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

- 18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.
- 18.2 In the event of any litigation arising out of this Agreement or any Work Authorization, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

- 20.1 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction, as applicable, and shall comply with all applicable TOWN Codes, county, state and federal laws, rules and regulations.
- 20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper, as applicable, under similar circumstances. If at any time during the term of any Work Authorization or the construction of a specific project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONSULTANT's documents are

incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services that failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, in equity or otherwise.

- 20.3 The CONSULTANT'S obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or Work Authorization.
- 20.4 CONSULTANT shall comply with all laws, ordinances, and governmental rules, regulations and order, now or at any time during the term of the Agreement, which are applicable to or which affect the work performed under this Agreement or any Work Authorization or any procedures of the CONSULTANT for such work.

SECTION 21. SUBCONTRACTORS

- 21.1 In the event the CONSULTANT requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONSULTANT must secure the prior written approval of the Town Manager.
- 21.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.
- 21.3 No reimbursement or payment shall be made to the CONSULTANT for any subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT and CONSULTANT is solely responsible for use of unapproved subcontractors.
- 21.4 CONSULTANT shall provide the Town Manager with evidence of insurability consistent with the minimum insurance coverage requirements in Section 16 of this Agreement for all subcontractors proposed by CONSULTANT to perform services under this Agreement or any Work Authorization. The subcontractor's insurance shall list the TOWN as an Additional Insured for General Liability and Auto Liability of the subcontractor resulting from operations performed by or on behalf of TOWN in performance of this Agreement or any Work Authorization.

SECTION 22. NOTICES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement and any Work Authorization by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement, or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 24. DISPUTE RESOLUTION

- 24.1 Any dispute concerning performance of this Agreement shall be decided by the TOWN, who shall reduce the decision to writing and serve a copy on the CONSULTANT. The decision shall be final and conclusive unless within 21 calendar days from the date of receipt, the CONSULTANT files with the TOWN a petition for an administrative hearing. The TOWN's decision on the petition shall be final, subject to the CONSULTANT's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the CONSULTANT's ability to pursue any other form of dispute resolution, including, but not limited to, litigation; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 24.2 Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Broward County, Florida.

SECTION 25. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 26. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28. CONFLICTS

- 28.1 In the event of a conflict among the components of the Contract Documents, the following order of precedence shall apply: (1) this Agreement and any written amendments, (2) the documents required to be submitted hereunder, (3) the RFQ, and (4) the CONSULTANT's Proposal.
- 28.2 Each Contract Document referenced in this Agreement is an integral part of the Agreement. Contract Documents, even if not physically attached, are incorporated by reference and should be treated as part of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

SECTION 32. STATE REQUIRED CERTIFICATIONS/AFFIDAVITS.

By entering into this Agreement, the CONSULTANT agrees to review and comply with the following state affidavit requirements:

- 32.1 **Public Entity Crimes Affidavit.** CONSULTANT shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 32.2 **Scrutinized Companies.** CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the CONSULTANT certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in

the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 32.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the TOWN requires all contractors doing business with the TOWN to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The TOWN will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 32.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 32.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

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TOWN OF LAUDERDALE-BY-THE-SEA

_____ (telephone)

_____ (email)

_____ (telephone)

_____ (email)

**EXHIBIT A
RATES**

Position	Rate
Firm Principal	\$281
Professional Engineer	\$237
Graduate Engineer	\$198
Computer Drafter	\$143
Clerical	\$77
Expert Witness/Litigation Support	\$386
Sr Planner	\$198
Jr Planner	\$154
Engineering Intern	N/A

EXHIBIT B

SCOPE OF SERVICES

The scope of services to be provided by the Selected Firms may include, but is not limited to, the following, all of which shall be performed in accordance with applicable law:

- a) Prepare preliminary or feasibility design reports and/or design alternative recommendations. This may include preparation of conceptual designs, various types of utility modeling, surveying, field data analysis, estimates of probable construction cost and life-cycle cost analysis.
- b) Organize and attend meetings with and/or make presentations to elected officials, TOWN management, homeowner associations, business associations, and other interested stakeholder groups as requested by the TOWN. Prepare recommendations for appropriate community outreach components and processes for project development.
- c) Conduct and/or attend pre-design, design, bidding and bid award meetings for which the TOWN deems attendance is required.
- d) Prepare required bidding/construction documents for the project(s). This may include the preparation of surveys, design plans, technical specifications, cost estimates, permit applications to government agencies, and other related contract documents.
- e) Assist in evaluating bids and making bid award recommendations for construction contract(s).
- f) Provide engineering, management, administration, inspection and value engineering services for projects during construction. This may include responding to contractor's Requests for Information, shop drawing/contractor submittal review and approval, inspection and approval of project improvements or progress, certification of projects from various permitting entities, possible field revisions, and review and approval of contractor pay applications. Evaluate and make recommendations on change orders.
- g) Provide project close-out services. This may include inspection, preliminary and final acceptance of projects, preparation and approval of punch list items, providing as-built record drawings, operation and maintenance manuals, and project certification as required to all permitting agencies.
- h) Identify possible grant funding opportunities and write grant applications or portions thereof for submittal to appropriate agencies.
- i) Act as the TOWN's designated representative and engineer for various governmental engineering functions including review of development responses and issue comments related to compliance with relevant Town Codes, participation in Design Review Committee, issuance or recommendations for issuance of various Town permits, and attend meetings at the TOWN's request.

- j) Provide any other professional services to the TOWN in accordance with the CCNA, including for projects in which the estimated construction cost of each individual project under the contract does not exceed \$7.5 million; a study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for Work of a specified nature as outlined in the contract required by the TOWN, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Town is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

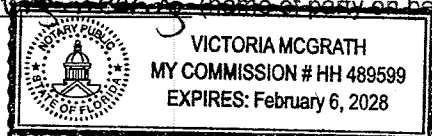
By signing below, I hereby affirm under penalty of perjury that:

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Town, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of Flynn Engineering a nongovernmental entity.
3. Flynn Engineering does not use coercion for labor or services as defined in the relevant section of the law.

OATH OR AFFIRMATION

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this 17 day of October, 2024, by Jay M. Flynn
(name of person) as President (type of authority) for
Flynn Engineering (name of party on behalf of whom instrument is executed).



Notary Public (Print, Stamp, or Type as
Commissioned)

- ☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☒ Did take an oath; or
☐ Did not take an oath

**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Town may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

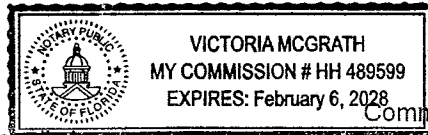
This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Town which would grant the entity access to an individual's personal identifying information.

1. Flynn Engineering ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

OATH OR AFFIRMATION

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this 17 day of October, 2024, by Jay M. Flynn (name of person) as President (type of authority) for Flynn Engineering (name of party on behalf of whom instrument is executed).



☒ Personally known to me, or
☐ Produced identification (Type of Identification: _____)
☒ Did take an oath; or
☐ Did not take an oath

Entities of Foreign Countries of Concern Affidavit



FLYNENG-01

RJONES

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/17/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME:		
	PHONE (A/C, No, Ext): (703) 827-2277	FAX (A/C, No): (703) 827-2279	
	E-MAIL ADDRESS: admin@amesgough.com		
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Flynn Engineering Services PA 241 Commercial Boulevard Lauderdale By The Sea, FL 33308	INSURER A : Continental Casualty Company (CNA) A, XV		20443
	INSURER B : National Fire Insurance Company of Hartford A(XV)		20478
	INSURER C : Transportation Insurance Company A(XV)		20494
	INSURER D : Underwriters At Lloyds of London		15642
	INSURER E :		
	INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			6076166562	4/1/2024	4/1/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			6076218188	4/1/2024	4/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			6081521811	4/1/2024	4/1/2025	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☒ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	6025161446	4/1/2024	4/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	Professional Liab.			CAE00046-00	4/1/2024	4/1/2025	Per Claim/Aggregate 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
re: Lauderdale by the Sea Town Engineer 2024

Town of Lauderdale by the Sea is included as additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability when required by written contract. 30-day Notice of Cancellation will be issued for the Professional Liability policy in accordance with policy terms and conditions. Umbrella follows form over General Liability, Auto Liability, Employers Liability.

CERTIFICATE HOLDER

CANCELLATION

Town of Lauderdale by the Sea Municipal Services 4501 Ocean Dr Lauderdale By The Sea, FL 33308	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH BAXTER & WOODMAN, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

WHEREAS, on July 24, 2024, the Town of Lauderdale-By-The-Sea (the “Town”) issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects, in accordance with Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (CCNA) (the “Services”); and

WHEREAS, fifteen sealed responses were received by the RFQ deadline, and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39, which approved the rankings of respondents to the RFQ and authorized the Town Manager to negotiate a continuing professional services agreement with the top seven ranked qualified firms, including Baxter & Woodman, Inc. (the “Consultant”) for professional engineering and traffic engineering services (the “Services”); and

WHEREAS, the Town Manager has negotiated the agreement attached hereto as Exhibit “1” (the “Agreement”) with the Consultant for the Services and the Town Commission wishes to approve the Agreement; and

WHEREAS, the Town Commission finds that it is in the best interests of the Town to proceed as indicated in this Resolution and approve the Agreement with the Consultant for the Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval. The Town Commission hereby approves the Agreement with the Consultant for the Services.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with the Consultant, in substantially the form attached hereto as Exhibit 1, subject to the final approval of the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of November 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT 1

CONTINUING PROFESSIONAL SERVICES AGREEMENT BETWEEN TOWN OF LAUDERDALE-BY-THE-SEA AND BAXTER & WOODMAN, INC.

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation (the “TOWN”) and Baxter & Woodman, Inc., an Illinois profit corporation authorized to do business in Florida (the “CONSULTANT”).

WHEREAS, pursuant to Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (“CCNA”), on July 24, 2024, the TOWN issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects; and

WHEREAS, in response to the RFQ, the Consultant submitted its qualifications (the “Qualifications,” which are incorporated herein by reference) for professional engineering and traffic engineering services (the “Services,” as herein defined); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39 selecting the CONSULTANT as one of the top-ranked firms to perform the Services and authorized the Town Manager to negotiate and execute a contract with the CONSULTANT; and

WHEREAS, the TOWN and CONSULTANT, through mutual negotiation, have agreed upon a rate schedule as set forth in **Exhibit A** (the “Rate Schedule”) in connection with the Services; and

WHEREAS, the CONSULTANT will perform the Services for the TOWN, as further described in **Exhibit B** attached hereto, on an as-requested, per-project basis; and

WHEREAS, the TOWN desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Additional definitions provided for in the RFQ are also incorporated herein.

- 2.1 **Contract Documents** refers to this Agreement, the Request for Qualifications No. 24-07-01 RFQ), incorporated herein by reference, CONSULTANT's response to the RFQ, incorporated herein by reference, all specifications, Certificate(s) of Insurance, Work Authorizations and all written amendments issued on or after the effective date of this Agreement.
- 2.2 **Compensation** means the total amount paid by the TOWN for the CONSULTANT's professional services pursuant to an executed Work Authorization, exclusive of Reimbursable Expenses.
- 2.3 **Reimbursable Expenses** means the expenses directly attributable to the Work Authorization that are not Compensation in the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONSULTANT. Reimbursable Expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified the Work Authorization; travel expenses as provided in Paragraph 3.4 of this Agreement. Travel Expenses are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager.
- 2.4 **Subcontractor Fee** means the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.
- 2.5 **Work Authorization** means the document issued by TOWN to a CONSULTANT authorizing a specific scope of services, the Compensation to be paid, the time frame to complete the work and other project specific details.

SECTION 3. WORK AUTHORIZATIONS; SCOPE OF SERVICES; COMPENSATION

- 3.1 In accordance with the CCNA, the CONSULTANT shall provide professional services to the TOWN for projects that are specified in Work Authorizations that may be approved from time to time by either the Town Commission or Town Manager as authorized by this Section 3. The TOWN reserves the right to select one or more firms to perform any specific project.
- 3.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONSULTANT for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide such professional services. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 3.3 (a) through (g). The Town Manager or designated representative and CONSULTANT shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 3. Each Work Authorization shall incorporate this Agreement by reference.

- 3.3 The TOWN and CONSULTANT shall utilize a supplemental agreement referred to as a Work Authorization which will, by mutual agreement, set forth, among other things, the following:
- a. The Scope of Services;
 - b. The tasks to be performed, including any deliverables;
 - c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
 - d. The amount and type of Compensation requested and the proposed payment schedule;
 - e. The CONSULTANT's Project Manager and any subcontractors assigned to the Work Authorization;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
 - g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.
- 3.4 Upon the completion of each task assigned to CONSULTANT, CONSULTANT shall provide the applicable records to TOWN. All documents including, but not limited to, electronic files, drawings and specifications prepared in connection with the project.
- 3.5 CONSULTANT acknowledges that TOWN and CONSULTANT shall establish mutually agreeable performance standards to evaluate CONSULTANT's performance based upon responsiveness, quality of work, turn around time for the completion of required work and other standards agreed to by the parties. CONSULTANT and TOWN'S Director of Development Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.6 The TOWN agrees to compensate CONSULTANT for services rendered on an hourly basis in accordance with the rates shown in **Exhibit A**. The hourly rates set forth in **Exhibit A** shall be subject to an annual increase based on the Consumer Price Index (CPI) or 5%, whichever is lower.
- 3.7 Each Work Authorization shall specify whether compensation will be on an hourly basis or lump sum, with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.
- 3.8 Travel Expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.
- 3.9 CONSULTANT will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and the percentage of the Work Authorization completed. Within 10 days after receipt of the invoice, the Town shall notify

CONSULTANT, in writing, of any discrepancies or disputed items on the invoice and indicate what corrective action on the part of the CONSULTANT is needed to make the invoice proper. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONSULTANT. The TOWN shall pay the CONSULTANT the undisputed portion of the invoice within thirty (30) days of receipt of the invoice.

- 3.10 If a dispute arises concerning payment of an invoice, the Town Manager or designee shall commence proceedings to resolve the dispute within thirty (30) days after receipt of the invoice. The Town Manager shall make a final determination regarding any disputed portion of the invoice within forty-five (45) days of receipt of the invoice during which time the Town Manager or designee shall meet with the CONSULTANT to seek resolution of the disputed invoice.
- 3.11 The professional services to be rendered by the CONSULTANT shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONSULTANT prior to execution of a Work Authorization shall be at CONSULTANT's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.
- 3.12 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONSULTANT'S services do not exceed \$25,000.00. Any services exceeding \$25,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.
- 3.13 In the event that a Work Authorization for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONSULTANT, at no additional cost to the TOWN, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

SECTION 4. TERM/TERMINATION

- 4.1 **Term of Agreement.** This Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for a period of five years, unless terminated earlier pursuant to this Agreement. At the TOWN's option, this Agreement may be renewed for two successive two-year renewal terms under the same terms and conditions if mutually agreeable to the parties.
- 4.2 **Termination For Convenience.** The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, upon thirty (30) calendar days' written notice to CONSULTANT. If any such termination notice is provided by the TOWN, the CONSULTANT shall immediately cease work on any Work Authorizations

issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT for work completed pursuant to this Agreement to the satisfaction of the TOWN, its reasonable documented costs actually incurred as of the date of the termination notice. Under no circumstances shall the TOWN make payment of profit for services that have not been performed.

- 4.3 **Termination For Cause.** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify and hold the TOWN harmless against any loss pertaining to such termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 4.2 and the provisions of Section 4.2 shall apply.
- 4.4 **Non-Exclusive Agreement.** Notwithstanding the provisions of this Agreement, the Town Manager may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.
- 4.5 **Town Right to Extend.** At the sole discretion of the Town Manager, this Agreement may be extended for a period of up to one hundred fifty (150) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the Town Manager to be in the best interest of the Town. Extensions beyond one hundred fifty (150) days must be approved by the Town Commission.

SECTION 5. CHANGES TO WORK AUTHORIZATIONS

- 5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Authorization consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by a Work Authorization Amendment without invalidating the Work Authorization. Such changes must be contained in a written Work Authorization Amendment executed by the parties in accordance with the provisions of this Agreement, prior to any deviation from the terms of the Work Authorization, including the initiation of any extra work. The Compensation and/or the Completion time may be changed only by Work Authorization Amendment.
- 5.2 **Work Authorization Amendment Defined.** A Work Authorization Amendment shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. A

Work Authorization shall only be modified by an executed Work Authorization Amendment or the issuance of a new Work Authorization.

- 5.3 **Effect of Executed Work Authorization Amendment.** The execution of a Work Authorization Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT and the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. The CONSULTANT, by executing the Work Authorization Amendment, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Authorization Amendment. The CONSULTANT agrees that no claim for delay damages shall be asserted against the TOWN and hereby waives the right to assert any such claim.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

- 7.1 TOWN shall assist CONSULTANT by providing CONSULTANT with available information that is pertinent to the Work Authorization as may be requested in writing by the CONSULTANT and allow reasonable access to pertinent information relating to the services to be performed by CONSULTANT.
- 7.2 TOWN shall provide CONSULTANT access to TOWN property as required for CONSULTANT to perform services under this Agreement or any Work Authorization.

SECTION 8. PROFESSIONAL CONDUCT; CONFLICT OF INTEREST

- 8.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.
- 8.2 CONSULTANT warrants and represents that it shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and Broward County Code of Ethics (County Code Section 1-19), as they may be amended from time to time.

- 8.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 8.4 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
- 8.5 During the term of this Agreement, CONSULTANT agrees not to accept representation of another client that is regulated by or requires development approval from the TOWN or has interests that are directly adverse to TOWN'S interest.
- 8.6 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

- 9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or services provided under this Agreement or any Work Authorization and shall not engage in or commit any discriminatory practice against any person based on race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery in the performance of work under this Agreement or a Work Authorization.
- 9.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

- 10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to this Agreement and any Work Authorization shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within 10 calendar days after written notice requesting delivery of such documents. In no event shall the CONSULTANT use, or permit to be used, any of the documents, without the TOWN'S prior written authorization.
- 10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for a Work Authorization

shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

- 10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.
- 10.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 11. RECORDS/AUDITS

- 11.1 CONSULTANT shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Work Authorization and any work performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Work Authorization or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.
- 11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
 - a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TOWN.
 - b. Upon request from the TOWN's custodian of public records, CONSULTANT shall provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the TOWN.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the Town Manager, at no cost to the TOWN, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the Town in a format that is compatible with the TOWN's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-640-4200, TOWNCLERK@LAUDERDALEBYTHESEA-FL.GOV, OR BY MAIL: TOWN CLERK, 4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 12. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement and any Work Authorizations. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

- 14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld in the TOWN's sole discretion.
- 14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

- 15.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, or costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Authorization.
- 15.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement and each Work Authorization for the above hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15.
- 15.3 Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section 15 shall survive termination of this Agreement.

SECTION 16. INSURANCE

- 16.1 The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The insurance coverage shall be primary insurance with respect to the

CONSULTANT, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The following minimum insurance coverage requirements shall apply on a per project basis:

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONSULTANT shall be allowed to provide services pursuant to this RFQ who is not covered by Worker's Compensation insurance.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONSULTANT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non-Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.
- c. **Comprehensive General Liability:** This insurance shall be written on a "per occurrence" basis only in comprehensive form and shall protect the TOWN and the CONSULTANT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, or \$1,000,000 per occurrence/\$2,000,000 general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage. Defense Costs must be 'outside the limits' of liability.
- d. **Professional Liability:** \$1,000,000 per incident. If coverage is written on a claims-made form, the retroactive date of coverage shall be no later than the inception date of the claims made coverage, unless the prior act policy was extended indefinitely to cover prior period acts. Provisions shall be made to provide coverage beyond the policy year, when necessary. Defense Costs must be 'outside the limits' of liability.

At the Town's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

- e. **Certificate of Insurance:** Concurrent with the execution of this Agreement and prior to the execution of a Work Authorization, the CONSULTANT shall provide the TOWN an original Certificate of Insurance documenting compliance with each required insurance policy. The TOWN is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONSULTANT resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- **Completed Operations** & CG 20 10 04 13 Additional Insured-owners, lessees or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the Town Manager, in the Town Manager's sole discretion.

CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- 16.2 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.
- 16.3 Insurance carriers providing the insurance required by this Agreement or any Work Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the Town shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.
- 16.4 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

- 17.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.
- 17.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

- 18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.
- 18.2 In the event of any litigation arising out of this Agreement or any Work Authorization, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

- 20.1 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction, as applicable, and shall comply with all applicable TOWN Codes, county, state and federal laws, rules and regulations.
- 20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper, as applicable, under similar circumstances. If at any time during the term of any Work Authorization or the construction of a specific project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONSULTANT's documents are

incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services that failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, in equity or otherwise.

- 20.3 The CONSULTANT'S obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or Work Authorization.
- 20.4 CONSULTANT shall comply with all laws, ordinances, and governmental rules, regulations and order, now or at any time during the term of the Agreement, which are applicable to or which affect the work performed under this Agreement or any Work Authorization or any procedures of the CONSULTANT for such work.

SECTION 21. SUBCONTRACTORS

- 21.1 In the event the CONSULTANT requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONSULTANT must secure the prior written approval of the Town Manager.
- 21.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.
- 21.3 No reimbursement or payment shall be made to the CONSULTANT for any subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT and CONSULTANT is solely responsible for use of unapproved subcontractors.
- 21.4 CONSULTANT shall provide the Town Manager with evidence of insurability consistent with the minimum insurance coverage requirements in Section 16 of this Agreement for all subcontractors proposed by CONSULTANT to perform services under this Agreement or any Work Authorization. The subcontractor's insurance shall list the TOWN as Additional Insured for General Liability and Auto Liability of the subcontractor resulting from operations performed by or on behalf of TOWN in performance of this Agreement or any Work Authorization.

SECTION 22. NOTICES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement and any Work Authorization by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement, or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 24. DISPUTE RESOLUTION

- 24.1 Any dispute concerning performance of this Agreement shall be decided by the TOWN, who shall reduce the decision to writing and serve a copy on the CONSULTANT. The decision shall be final and conclusive unless within 21 calendar days from the date of receipt, the CONSULTANT files with the TOWN a petition for an administrative hearing. The TOWN's decision on the petition shall be final, subject to the CONSULTANT's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the CONSULTANT's ability to pursue any other form of dispute resolution, including, but not limited to, litigation; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 24.2 Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Broward County, Florida.

SECTION 25. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 26. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28. CONFLICTS

- 28.1 In the event of a conflict among the components of the Contract Documents, the following order of precedence shall apply: (1) this Agreement and any written amendments, (2) the documents required to be submitted hereunder, (3) the RFQ, and (4) the CONSULTANT's Proposal.
- 28.2 Each Contract Document referenced in this Agreement is an integral part of the Agreement. Contract Documents, even if not physically attached, are incorporated by reference and should be treated as part of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

SECTION 32. STATE REQUIRED CERTIFICATIONS/AFFIDAVITS.

By entering into this Agreement, the CONSULTANT agrees to review and comply with the following state affidavit requirements:

- 32.1 **Public Entity Crimes Affidavit.** CONSULTANT shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 32.2 **Scrutinized Companies.** CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the CONSULTANT certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran

Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 32.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the TOWN requires all contractors doing business with the TOWN to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The TOWN will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 32.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 32.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

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EXHIBIT A

Rates

TOWN OF LAUDERDALE-BY-THE-SEA

BAXTER & WOODMAN, INC.
2025 HOURLY BILLING RATES FOR PROFESSIONAL SERVICES

EMPLOYEE CLASSIFICATION	2025 HOURLY BILLING RATES
Executive Vice President	\$275
Vice President	\$260
Engineer VII	\$252
Engineer VI	\$242
Engineer V	\$220
Engineer IV	\$205
Engineer III	\$180
Engineer II	\$160
Engineer I	\$138
Engineering Intern	\$80
Construction Manager II	\$210
Construction Manager I	\$180
Engineering Tech V	\$185
Engineering Tech IV	\$160
Engineering Tech III	\$145
Engineering Tech II	\$125
Spatial Technology Professional V	\$200
Spatial Technology Professional IV	\$195
Spatial Technology Professional III	\$175
Spatial Technology Professional II	\$145
Spatial Technology Professional I	\$130
CADD Tech III	\$155
CADD Tech II	\$135
CADD Tech I	\$100
Administrative Support I to IV	\$100
Communication Specialist I to IV	\$150

- Hourly rates for inspection services do not include any overtime.
- Hourly Rates include direct labor and indirect overhead expenses, readiness to serve, and profit, and are for 8 hours/day and 40 hours/week regularly scheduled work hours.

TOWN OF LAUDERDALE-BY-THE-SEA

BAXTER & WOODMAN, INC.
2025 DIRECT COSTS/EXPENSE ITEMS
FOR PROFESSIONAL SERVICES

ITEM	RATES
Personal Owned Vehicle Mileage	Reimbursed at the rate set by the US Internal Revenue Service
Traffic Counters	\$50 per day
	**\$300 per setup plus \$30/hour/intersection and \$85/hour bikes/
Miovision Traffic Data Collection System Flow	pedestrians processing
Meter and Strap-on Flow Meter Pressure Data	\$650 per month
Logger	\$50.00 per day per unit
Bathymetric Drone Boat	\$300 per day
Streetview Camera System	\$300 per day
Underwater Drone Vehicle	\$500 per day
Pavement Management Camera System Sony	\$500 per day
FX-30 Cinema Camera	\$250 per day
Aerial Drone LiDAR	\$300 per day
Indoor LiDAR Unit (for Revit use)	\$700 per day
Standard Aerial Drone Video/Photo Collection	\$200 per day
Advanced Digital Fieldbook	\$1,500 per month
Digital Fieldbook	\$500 per month
Riegl LiDAR	\$500 per day
PID Meter	\$150 per day
Hand Auger	\$50 per day
Disposable Field Supplies	\$30 per day
Sub-Consultant Costs	Invoice costs plus - 10%

** Does not include roundabouts

EXHIBIT B

SCOPE OF SERVICES

The scope of services to be provided by the Selected Firms may include, but is not limited to, the following, all of which shall be performed in accordance with applicable law:

- a) Prepare preliminary or feasibility design reports and/or design alternative recommendations. This may include preparation of conceptual designs, various types of utility modeling, surveying, field data analysis, estimates of probable construction cost and life-cycle cost analysis.
- b) Organize and attend meetings with and/or make presentations to elected officials, TOWN management, homeowner associations, business associations, and other interested stakeholder groups as requested by the TOWN. Prepare recommendations for appropriate community outreach components and processes for project development.
- c) Conduct and/or attend pre-design, design, bidding and bid award meetings for which the TOWN deems attendance is required.
- d) Prepare required bidding/construction documents for the project(s). This may include the preparation of surveys, design plans, technical specifications, cost estimates, permit applications to government agencies, and other related contract documents.
- e) Assist in evaluating bids and making bid award recommendations for construction contract(s).
- f) Provide engineering, management, administration, inspection and value engineering services for projects during construction. This may include responding to contractor's Requests for Information, shop drawing/contractor submittal review and approval, inspection and approval of project improvements or progress, certification of projects from various permitting entities, possible field revisions, and review and approval of contractor pay applications. Evaluate and make recommendations on change orders.
- g) Provide project close-out services. This may include inspection, preliminary and final acceptance of projects, preparation and approval of punch list items, providing as-built record drawings, operation and maintenance manuals, and project certification as required to all permitting agencies.
- h) Identify possible grant funding opportunities and write grant applications or portions thereof for submittal to appropriate agencies.
- i) Act as the TOWN's designated representative and engineer for various governmental engineering functions including review of development responses and issue comments related to compliance with relevant Town Codes, participation in Design Review Committee, issuance or recommendations for issuance of various Town permits, and attend meetings at the TOWN's request.

- j) Provide any other professional services to the TOWN in accordance with the CCNA, including for projects in which the estimated construction cost of each individual project under the contract does not exceed \$7.5 million; a study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for Work of a specified nature as outlined in the contract required by the TOWN, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Town is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, I hereby affirm under penalty of perjury that:

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Town, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of Baxter & Woodman, Inc., a nongovernmental entity.
3. Baxter & Woodman, Inc. does not use coercion for labor or services as defined in the relevant section of the law.



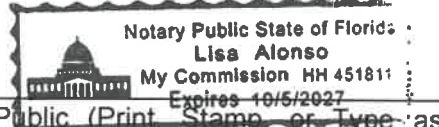
Rebecca Travis, Executive Vice President

OATH OR AFFIRMATION

State of Florida
County of Palm Beach

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 21st day of October, 2024, by Rebecca

(name of person) as _____ (type of authority) for
Travis (name of party on behalf of whom instrument is executed)



Notary Public (Print, Stamp, or Type as
Commissioned)

- ☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☐ Did take an oath; or
☒ Did not take an oath

**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Town may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Town which would grant the entity access to an individual's personal identifying information.

1. Baxter & Woodman, Inc. ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

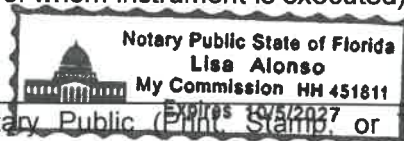
OATH OR AFFIRMATION

Rebecca Travis
Rebecca Travis, Executive Vice President

State of Florida

County of Palm Beach

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 21st day of October, 2024, by Rebecca
(name of person) as _____ (type of authority) for
Travis (name of party on behalf of whom instrument is executed).



Notary Public (Print, Stamp, or type as Commissioned)

- ☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☐ Did take an oath; or
☒ Did not take an oath



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/17/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Holmes Murphy & Associates 2727 Grand Prairie Pkwy Waukegan IA 50263	CONTACT NAME: Beau Murray PHONE (A/C, No, Ext): 608-242-2558 E-MAIL ADDRESS: BMurray@holmesmurphy.com	FAX (A/C, No):
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Valley Forge Insurance Company		20508
INSURER B : The Continental Insurance Company		35289
INSURER C : Continental Casualty Company		20443
INSURER D :		
INSURER E :		
INSURER F :		

COVERAGES**CERTIFICATE NUMBER:** 117847438**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:			7017821337	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			7017833701	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			7017835416	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N	N / A	717818681	1/1/2024	1/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability Claims made form			AEH591900841	1/1/2024	1/1/2025	Per claim \$5,000,000 Aggregate \$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

All Work Performed

Additional Insured only if required by written contract with respect to General Liability applies on a primary basis and the insurance of the additional insured shall be non-contributory: Town of Lauderdale-By-The-Sea, Florida and Others as required by written contract, per policy terms and conditions.

General Liability Policy includes an endorsement providing 30 day's notice of cancellation will be furnished to the certificate holder.

CERTIFICATE HOLDER**CANCELLATION**

Town of Lauderdale-By-The-Sea, Florida 4501 Ocean Drive Lauderdale-By-The-Sea FL 33308	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ENGINEERING, LANDSCAPE ARCHITECTURE, AND TRAFFIC ENGINEERING SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

WHEREAS, on July 24, 2024, the Town of Lauderdale-By-The-Sea (the “Town”) issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects, in accordance with Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (CCNA) (the “Services”); and

WHEREAS, fifteen sealed responses were received by the RFQ deadline, and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39, which approved the rankings of respondents to the RFQ and authorized the Town Manager to negotiate a continuing professional services agreement with the top seven ranked qualified firms, including Kimley-Horn and Associates, Inc. (the “Consultant”) for professional engineering, landscape architecture, and traffic engineering services (the “Services”); and

WHEREAS, the Town Manager has negotiated the agreement attached hereto as Exhibit “1” (the “Agreement”) with the Consultant for the Services and the Town Commission wishes to approve the Agreement; and

WHEREAS, the Town Commission finds that it is in the best interests of the Town to proceed as indicated in this Resolution and approve the Agreement with the Consultant for the Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval. The Town Commission hereby approves the Agreement with the Consultant for the Services.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with the Consultant, in substantially the form attached hereto as Exhibit 1, subject to the final approval of the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of November 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT 1

CONTINUING PROFESSIONAL SERVICES AGREEMENT BETWEEN TOWN OF LAUDERDALE-BY-THE-SEA AND KIMLEY-HORN AND ASSOCIATES, INC.

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation (the “TOWN”) and Kimley-Horn and Associates, Inc., a North Carolina profit corporation authorized to do business in Florida (the “CONSULTANT”).

WHEREAS, pursuant to Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (“CCNA”), on July 24, 2024, the TOWN issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects; and

WHEREAS, in response to the RFQ, the Consultant submitted its qualifications (the “Qualifications,” which are incorporated herein by reference) for professional engineering, landscape architecture, and traffic engineering services (the “Services,” as herein defined); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39 selecting the CONSULTANT as one of the top-ranked firms to perform the Services and authorized the Town Manager to negotiate and execute a contract with the CONSULTANT; and

WHEREAS, the TOWN and CONSULTANT, through mutual negotiation, have agreed upon a rate schedule as set forth in **Exhibit A** (the “Rate Schedule”) in connection with the Services; and

WHEREAS, the CONSULTANT will perform the Services for the TOWN, as further described in **Exhibit B** attached hereto, on an as-requested, per-project basis; and

WHEREAS, the TOWN desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

SECTION 1. RECITALS

The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Additional definitions provided for in the RFQ are also incorporated herein.

- 2.1 **Contract Documents** refers to this Agreement, the Request for Qualifications No. 24-07-01 RFQ), incorporated herein by reference, CONSULTANT's response to the RFQ, incorporated herein by reference, all specifications, Certificate(s) of Insurance, Work Authorizations and all written amendments issued on or after the effective date of this Agreement.
- 2.2 **Compensation** means the total amount paid by the TOWN for the CONSULTANT's professional services pursuant to an executed Work Authorization, exclusive of Reimbursable Expenses.
- 2.3 **Reimbursable Expenses** means the expenses directly attributable to the Work Authorization that are not Compensation in the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONSULTANT. Reimbursable Expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified the Work Authorization; travel expenses as provided in Paragraph 3.4 of this Agreement. Travel Expenses are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager.
- 2.4 **Subcontractor Fee** means the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.
- 2.5 **Work Authorization** means the document issued by TOWN to a CONSULTANT authorizing a specific scope of services, the Compensation to be paid, the time frame to complete the work and other project specific details.

SECTION 3. WORK AUTHORIZATIONS; SCOPE OF SERVICES; COMPENSATION

- 3.1 In accordance with the CCNA, the CONSULTANT shall provide professional services to the TOWN for projects that are specified in Work Authorizations that may be approved from time to time by either the Town Commission or Town Manager as authorized by this Section 3. The TOWN reserves the right to select one or more firms to perform any specific project.
- 3.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONSULTANT for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide such professional services. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 3.3 (a) through (g). The Town Manager or designated representative and CONSULTANT shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 3. Each Work Authorization shall incorporate this Agreement by reference.

- 3.3 The TOWN and CONSULTANT shall utilize a supplemental agreement referred to as a Work Authorization which will, by mutual agreement, set forth, among other things, the following:
- a. The Scope of Services;
 - b. The tasks to be performed, including any deliverables;
 - c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
 - d. The amount and type of Compensation requested and the proposed payment schedule;
 - e. The CONSULTANT's Project Manager and any subcontractors assigned to the Work Authorization;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
 - g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.
- 3.4 Upon the completion of each task assigned to CONSULTANT, CONSULTANT shall provide the applicable records to TOWN. All documents including, but not limited to, electronic files, drawings and specifications prepared in connection with the project.
- 3.5 CONSULTANT acknowledges that TOWN and CONSULTANT shall establish mutually agreeable performance standards to evaluate CONSULTANT's performance based upon responsiveness, quality of work, turn around time for the completion of required work and other standards agreed to by the parties. CONSULTANT and TOWN'S Director of Development Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.6 The TOWN agrees to compensate CONSULTANT for services rendered on an hourly basis in accordance with the rates shown in **Exhibit A**. The hourly rates set forth in **Exhibit A** shall be subject to an annual increase based on the Consumer Price Index (CPI) or 5%, whichever is lower.
- 3.7 Each Work Authorization shall specify whether compensation will be on an hourly basis or lump sum, with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.
- 3.8 Travel Expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.
- 3.9 CONSULTANT will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and the percentage of the Work Authorization completed. Within 10 days after receipt of the invoice, the Town shall notify

CONSULTANT, in writing, of any discrepancies or disputed items on the invoice and indicate what corrective action on the part of the CONSULTANT is needed to make the invoice proper. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONSULTANT. The TOWN shall pay the CONSULTANT the undisputed portion of the invoice within thirty (30) days of receipt of the invoice.

- 3.10 If a dispute arises concerning payment of an invoice, the Town Manager or designee shall commence proceedings to resolve the dispute within thirty (30) days after receipt of the invoice. The Town Manager shall make a final determination regarding any disputed portion of the invoice within forty-five (45) days of receipt of the invoice during which time the Town Manager or designee shall meet with the CONSULTANT to seek resolution of the disputed invoice.
- 3.11 The professional services to be rendered by the CONSULTANT shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONSULTANT prior to execution of a Work Authorization shall be at CONSULTANT's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.
- 3.12 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONSULTANT'S services do not exceed \$25,000.00. Any services exceeding \$25,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.
- 3.13 In the event that a Work Authorization for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONSULTANT, at no additional cost to the TOWN, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

SECTION 4. TERM/TERMINATION

- 4.1 **Term of Agreement.** This Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for a period of five years, unless terminated earlier pursuant to this Agreement. At the TOWN's option, this Agreement may be renewed for two successive two-year renewal terms under the same terms and conditions if mutually agreeable to the parties.
- 4.2 **Termination For Convenience.** The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, upon thirty (30) calendar days' written notice to CONSULTANT. If any such termination notice is provided by the TOWN, the CONSULTANT shall immediately cease work on any Work Authorizations

issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT for work completed pursuant to this Agreement to the satisfaction of the TOWN, its reasonable documented costs actually incurred as of the date of the termination notice. Under no circumstances shall the TOWN make payment of profit for services that have not been performed.

- 4.3 **Termination For Cause.** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify and hold the TOWN harmless against any loss pertaining to such termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 4.2 and the provisions of Section 4.2 shall apply.
- 4.4 **Non-Exclusive Agreement.** Notwithstanding the provisions of this Agreement, the Town Manager may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.
- 4.5 **Town Right to Extend.** At the sole discretion of the Town Manager, this Agreement may be extended for a period of up to one hundred fifty (150) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the Town Manager to be in the best interest of the Town. Extensions beyond one hundred fifty (150) days must be approved by the Town Commission.

SECTION 5. CHANGES TO WORK AUTHORIZATIONS

- 5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Authorization consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by a Work Authorization Amendment without invalidating the Work Authorization. Such changes must be contained in a written Work Authorization Amendment executed by the parties in accordance with the provisions of this Agreement, prior to any deviation from the terms of the Work Authorization, including the initiation of any extra work. The Compensation and/or the Completion time may be changed only by Work Authorization Amendment.
- 5.2 **Work Authorization Amendment Defined.** A Work Authorization Amendment shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. A

Work Authorization shall only be modified by an executed Work Authorization Amendment or the issuance of a new Work Authorization.

- 5.3 **Effect of Executed Work Authorization Amendment.** The execution of a Work Authorization Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT and the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. The CONSULTANT, by executing the Work Authorization Amendment, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Authorization Amendment. The CONSULTANT agrees that no claim for delay damages shall be asserted against the TOWN and hereby waives the right to assert any such claim.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

- 7.1 TOWN shall assist CONSULTANT by providing CONSULTANT with available information that is pertinent to the Work Authorization as may be requested in writing by the CONSULTANT and allow reasonable access to pertinent information relating to the services to be performed by CONSULTANT.
- 7.2 TOWN shall provide CONSULTANT access to TOWN property as required for CONSULTANT to perform services under this Agreement or any Work Authorization.

SECTION 8. PROFESSIONAL CONDUCT; CONFLICT OF INTEREST

- 8.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.
- 8.2 CONSULTANT warrants and represents that it shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and Broward County Code of Ethics (County Code Section 1-19), as they may be amended from time to time.

- 8.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 8.4 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
- 8.5 During the term of this Agreement, CONSULTANT agrees not to accept representation of another client that is regulated by or requires development approval from the TOWN or has interests that are directly adverse to TOWN'S interest.
- 8.6 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

- 9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or services provided under this Agreement or any Work Authorization and shall not engage in or commit any discriminatory practice against any person based on race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery in the performance of work under this Agreement or a Work Authorization.
- 9.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

- 10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to this Agreement and any Work Authorization shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within 10 calendar days after written notice requesting delivery of such documents. In no event shall the CONSULTANT use, or permit to be used, any of the documents, without the TOWN'S prior written authorization.

- 10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for a Work Authorization shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.
- 10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.
- 10.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 11. RECORDS/AUDITS

- 11.1 CONSULTANT shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Work Authorization and any work performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Work Authorization or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.
- 11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
- a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TOWN.
 - b. Upon request from the TOWN's custodian of public records, CONSULTANT shall provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the TOWN.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the Town Manager, at no cost to the TOWN, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the Town in a format that is compatible with the TOWN's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-640-4200, TOWNCLERK@LAUDERDALEBYTHESEA-FL.GOV, OR BY MAIL: TOWN CLERK, 4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 12. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement and any Work Authorizations. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

- 14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld in the TOWN's sole discretion.
- 14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

- 15.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, or costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Authorization.
- 15.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement and each Work Authorization for the above hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15.
- 15.3 Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section 15 shall survive termination of this Agreement.

SECTION 16. INSURANCE

- 16.1 The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The insurance coverage shall be primary insurance with respect to the

CONSULTANT, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The following minimum insurance coverage requirements shall apply on a per project basis:

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONSULTANT shall be allowed to provide services pursuant to this RFQ who is not covered by Worker's Compensation insurance.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONSULTANT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non-Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.
- c. **Comprehensive General Liability:** This insurance shall be written on a "per occurrence" basis only in comprehensive form and shall protect the TOWN and the CONSULTANT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, or \$1,000,000 per occurrence/\$2,000,000 general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage. Defense Costs must be 'outside the limits' of liability.
- d. **Professional Liability:** \$1,000,000 per incident. If coverage is written on a claims-made form, the retroactive date of coverage shall be no later than the inception date of the claims made coverage, unless the prior act policy was extended indefinitely to cover prior period acts. Provisions shall be made to provide coverage beyond the policy year, when necessary. Defense Costs must be 'outside the limits' of liability.

At the Town's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

- e. **Certificate of Insurance:** Concurrent with the execution of this Agreement and prior to the execution of a Work Authorization, the CONSULTANT shall provide the TOWN an original Certificate of Insurance documenting compliance with each required insurance policy. The TOWN is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONSULTANT resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- **Completed Operations** & CG 20 10 04 13 Additional Insured-owners, lessees or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the Town Manager, in the Town Manager's sole discretion.

CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- 16.2 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.
- 16.3 Insurance carriers providing the insurance required by this Agreement or any Work Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the Town shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.
- 16.4 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

- 17.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.
- 17.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

- 18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.
- 18.2 In the event of any litigation arising out of this Agreement or any Work Authorization, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

- 20.1 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction, as applicable, and shall comply with all applicable TOWN Codes, county, state and federal laws, rules and regulations.
- 20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper, as applicable, under similar circumstances. If at any time during the term of any Work Authorization or the construction of a specific project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONSULTANT's documents are

incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services that failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, in equity or otherwise.

- 20.3 The CONSULTANT'S obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or Work Authorization.
- 20.4 CONSULTANT shall comply with all laws, ordinances, and governmental rules, regulations and order, now or at any time during the term of the Agreement, which are applicable to or which affect the work performed under this Agreement or any Work Authorization or any procedures of the CONSULTANT for such work.

SECTION 21. SUBCONTRACTORS

- 21.1 In the event the CONSULTANT requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONSULTANT must secure the prior written approval of the Town Manager.
- 21.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.
- 21.3 No reimbursement or payment shall be made to the CONSULTANT for any subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT and CONSULTANT is solely responsible for use of unapproved subcontractors.
- 21.4 CONSULTANT shall provide the Town Manager with evidence of insurability consistent with the minimum insurance coverage requirements in Section 16 of this Agreement for all subcontractors proposed by CONSULTANT to perform services under this Agreement or any Work Authorization. The subcontractor's insurance shall list the TOWN as an Additional Insured for General Liability and Auto Liability of the subcontractor resulting from operations performed by or on behalf of TOWN in performance of this Agreement or any Work Authorization.

SECTION 22. NOTICES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement and any Work Authorization by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement, or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 24. DISPUTE RESOLUTION

- 24.1 Any dispute concerning performance of this Agreement shall be decided by the TOWN, who shall reduce the decision to writing and serve a copy on the CONSULTANT. The decision shall be final and conclusive unless within 21 calendar days from the date of receipt, the CONSULTANT files with the TOWN a petition for an administrative hearing. The TOWN's decision on the petition shall be final, subject to the CONSULTANT's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the CONSULTANT's ability to pursue any other form of dispute resolution, including, but not limited to, litigation; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 24.2 Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Broward County, Florida.

SECTION 25. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 26. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28. CONFLICTS

- 28.1 In the event of a conflict among the components of the Contract Documents, the following order of precedence shall apply: (1) this Agreement and any written amendments, (2) the documents required to be submitted hereunder, (3) the RFQ, and (4) the CONSULTANT's Proposal.
- 28.2 Each Contract Document referenced in this Agreement is an integral part of the Agreement. Contract Documents, even if not physically attached, are incorporated by reference and should be treated as part of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

SECTION 32. STATE REQUIRED CERTIFICATIONS/AFFIDAVITS.

By entering into this Agreement, the CONSULTANT agrees to review and comply with the following state affidavit requirements:

- 32.1 **Public Entity Crimes Affidavit.** CONSULTANT shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 32.2 **Scrutinized Companies.** CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the CONSULTANT certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in

the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 32.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the TOWN requires all contractors doing business with the TOWN to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The TOWN will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 32.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 32.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXHIBIT A Rates

Position Requirements	Hourly Rate (per hour)
Principal (P.E. - FL Registered)	\$ 280.00
Project Manager	\$ 225.00
Senior Engineer (P.E. - FL Registered)	\$ 250.00
Senior Process Engineer (P.E. - FL Registered)	\$ 235.00
Roadway Engineer	\$ 185.00
Engineer	\$ 170.00
Design Engineer	\$ 150.00
Junior Engineer	\$ 135.00
Senior Planner	\$ 220.00
Planner	\$ 180.00
Environmental Scientist	\$ 175.00
Landscape Architect (State of FL Registered)	\$ 195.00
Landscape Designer	\$ 150.00
Arborist (ISA Certified)	\$ 140.00
Land Surveyor (PLS - FL Registered)	\$ 180.00
Survey Crew (2 - persons)	\$ 170.00
Survey Crew (3 - persons)	\$ 210.00
Senior Field Inspector	\$ 150.00
Field Inspector	\$ 120.00
Administrative Assistant	\$ 95.00
Technician	\$ 115.00
Drafter/ GIS/ CADD Technician	\$ 120.00
Clerical	\$ 75.00

EXHIBIT B

SCOPE OF SERVICES

The scope of services to be provided by the Selected Firms may include, but is not limited to, the following, all of which shall be performed in accordance with applicable law:

- a) Prepare preliminary or feasibility design reports and/or design alternative recommendations. This may include preparation of conceptual designs, various types of utility modeling, surveying, field data analysis, estimates of probable construction cost and life-cycle cost analysis.
- b) Organize and attend meetings with and/or make presentations to elected officials, TOWN management, homeowner associations, business associations, and other interested stakeholder groups as requested by the TOWN. Prepare recommendations for appropriate community outreach components and processes for project development.
- c) Conduct and/or attend pre-design, design, bidding and bid award meetings for which the TOWN deems attendance is required.
- d) Prepare required bidding/construction documents for the project(s). This may include the preparation of surveys, design plans, technical specifications, cost estimates, permit applications to government agencies, and other related contract documents.
- e) Assist in evaluating bids and making bid award recommendations for construction contract(s).
- f) Provide engineering, management, administration, inspection and value engineering services for projects during construction. This may include responding to contractor's Requests for Information, shop drawing/contractor submittal review and approval, inspection and approval of project improvements or progress, certification of projects from various permitting entities, possible field revisions, and review and approval of contractor pay applications. Evaluate and make recommendations on change orders.
- g) Provide project close-out services. This may include inspection, preliminary and final acceptance of projects, preparation and approval of punch list items, providing as-built record drawings, operation and maintenance manuals, and project certification as required to all permitting agencies.
- h) Identify possible grant funding opportunities and write grant applications or portions thereof for submittal to appropriate agencies.
- i) Act as the TOWN's designated representative and engineer for various governmental engineering functions including review of development responses and issue comments related to compliance with relevant Town Codes, participation in Design Review Committee, issuance or recommendations for issuance of various Town permits, and attend meetings at the TOWN's request.

- j) Provide any other professional services to the TOWN in accordance with the CCNA, including for projects in which the estimated construction cost of each individual project under the contract does not exceed \$7.5 million; a study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for Work of a specified nature as outlined in the contract required by the TOWN, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Town is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, I hereby affirm under penalty of perjury that:

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Town, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of Kimley-Horn and Associates, Inc., a nongovernmental entity.
3. Kimley-Horn and Associates, Inc. does not use coercion for labor or services as defined in the relevant section of the law.

Signed on this 17th day of October, 2024.

By: _____
Signature of Affiant

Stefano Viola
Printed Name

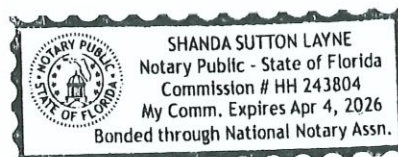
OATH OR AFFIRMATION

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 17th day of October, 2024, by Stefano Viola
(name of person) as Vice-President (type of authority) for
Kimley-Horn and Associates, Inc. (name of party on behalf of whom instrument is executed).

Shanda Sutton Layne
Notary Public (Print, Stamp, or Type as
Commissioned)

✓
____ Personally known to me; or
____ Produced identification (Type of Identification: _____)
____ Did take an oath; or
____ Did not take an oath



**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Town may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Town which would grant the entity access to an individual's personal identifying information.

1. Kimley-Horn and Associates, Inc. ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

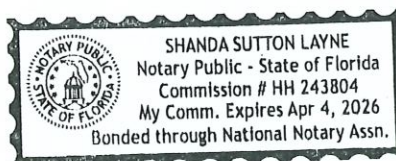
Signed on this 17th day of OCTOBER, 2024.
By: [Signature]
Signature of Affiant
Shelene Viole
Printed Name

State of Florida Broward.
County of Broward.
OATH OR AFFIRMATION

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 17th day of OCTOBER, 2024, by Shelene Viole
(name of person) as Vice-President (type of authority) for
Kimley-Horn and Associates, Inc. (name of party on behalf of whom instrument is executed).

[Signature]
Notary Public (Print, Stamp, or Type as
Commissioned) Shanda Sutton Layne

☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☐ Did take an oath; or
☐ Did not take an oath





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Edgewood Partners Insurance Agency 3780 Mansell Rd. Suite 370 Alpharetta GA 30022		CONTACT NAME: Jerry Noyola PHONE (A/C, No, Ext): 7702207699 E-MAIL ADDRESS: greylingcerts@greyling.com	
		FAX (A/C, No):	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: National Union Fire Ins Co of Pittsburg	
		INSURER B: Allied World Assurance Co (U.S.) Inc.	
		INSURER C: New Hampshire Insurance Company	
		INSURER D: Lloyd's of London	
		INSURER E:	
		INSURER F:	

COVERAGES**CERTIFICATE NUMBER:** 1681305609**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			GL5268169	4/1/2024	4/1/2025	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$25,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			03127930	4/1/2024	4/1/2025	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	WC015893685 (AOS) WC015893686 (CA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$2,000,000 E.L. DISEASE - EA EMPLOYEE \$2,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000
D	Professional Liability			B0146LDUSA2404949	4/1/2024	4/1/2025	Per Claim Aggregate \$2,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: RFQ 24-07-01 Continuing Professional Services; Stefano Viola. The Town of Lauderdale by the Sea are named as Additional Insureds with respects to General & Automobile Liability where required by written contract. Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, 30 days' written notice (except 10 days for nonpayment of premium) will be provided to the Certificate Holder.

CERTIFICATE HOLDER**CANCELLATION**

Town of Lauderdale by the Sea
4501 OCEAN DRIVE
Lauderdale by the Sea FL 33308

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service,

maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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WHEREAS, on July 24, 2024, the Town of Lauderdale-By-The-Sea (the “Town”) issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects, in accordance with Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (CCNA) (the “Services”); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39, which approved the rankings of respondents to the RFQ and authorized the Town Manager to negotiate a continuing professional services agreement with the top seven ranked qualified firms, including Caulfield & Wheeler, Inc. (the “Consultant”) for professional engineering, landscape architecture, survey and mapping, and traffic engineering services (the “Services”); and

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WHEREAS, the Town Commission finds that it is in the best interests of the Town to proceed as indicated in this Resolution and approve the Agreement with the Consultant for the Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval. The Town Commission hereby approves the Agreement with the Consultant for the Services.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with the Consultant, in substantially the form attached hereto as Exhibit 1, subject to the final approval of the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this day of November 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT 1

CONTINUING PROFESSIONAL SERVICES AGREEMENT BETWEEN TOWN OF LAUDERDALE-BY-THE-SEA AND CAULFIELD & WHEELER, INC.

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation (the “TOWN”) and Caulfield & Wheeler, Inc., a Florida profit corporation (the “CONSULTANT”).

WHEREAS, pursuant to Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (“CCNA”), on July 24, 2024, the TOWN issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects; and

WHEREAS, in response to the RFQ, the Consultant submitted its qualifications (the “Qualifications,” which are incorporated herein by reference) for professional engineering, landscape architecture, survey and mapping, and traffic engineering services (the “Services,” as herein defined); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39 selecting the CONSULTANT as one of the top-ranked firms to perform the Services and authorized the Town Manager to negotiate and execute a contract with the CONSULTANT; and

WHEREAS, the TOWN and CONSULTANT, through mutual negotiation, have agreed upon a rate schedule as set forth in **Exhibit A** (the “Rate Schedule”) in connection with the Services; and

WHEREAS, the CONSULTANT will perform the Services for the TOWN, as further described in **Exhibit B** attached hereto, on an as-requested, per-project basis; and

WHEREAS, the TOWN desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Additional definitions provided for in the RFQ are also incorporated herein.

- 2.1 **Contract Documents** refers to this Agreement, the Request for Qualifications No. 24-07-01 RFQ), incorporated herein by reference, CONSULTANT's response to the RFQ, incorporated herein by reference, all specifications, Certificate(s) of Insurance, Work Authorizations and all written amendments issued on or after the effective date of this Agreement.
- 2.2 **Compensation** means the total amount paid by the TOWN for the CONSULTANT's professional services pursuant to an executed Work Authorization, exclusive of Reimbursable Expenses.
- 2.3 **Reimbursable Expenses** means the expenses directly attributable to the Work Authorization that are not Compensation in the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONSULTANT. Reimbursable Expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified the Work Authorization; travel expenses as provided in Paragraph 3.4 of this Agreement. Travel Expenses are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager.
- 2.4 **Subcontractor Fee** means the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.
- 2.5 **Work Authorization** means the document issued by TOWN to a CONSULTANT authorizing a specific scope of services, the Compensation to be paid, the time frame to complete the work and other project specific details.

SECTION 3. WORK AUTHORIZATIONS; SCOPE OF SERVICES; COMPENSATION

- 3.1 In accordance with the CCNA, the CONSULTANT shall provide professional services to the TOWN for projects that are specified in Work Authorizations that may be approved from time to time by either the Town Commission or Town Manager as authorized by this Section 3. The TOWN reserves the right to select one or more firms to perform any specific project.
- 3.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONSULTANT for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide such professional services. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 3.3 (a) through (g). The Town Manager or designated representative and CONSULTANT shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 3. Each Work Authorization shall incorporate this Agreement by reference.

- 3.3 The TOWN and CONSULTANT shall utilize a supplemental agreement referred to as a Work Authorization which will, by mutual agreement, set forth, among other things, the following:
- a. The Scope of Services;
 - b. The tasks to be performed, including any deliverables;
 - c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
 - d. The amount and type of Compensation requested and the proposed payment schedule;
 - e. The CONSULTANT's Project Manager and any subcontractors assigned to the Work Authorization;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
 - g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.
- 3.4 Upon the completion of each task assigned to CONSULTANT, CONSULTANT shall provide the applicable records to TOWN. All documents including, but not limited to, electronic files, drawings and specifications prepared in connection with the project.
- 3.5 CONSULTANT acknowledges that TOWN and CONSULTANT shall establish mutually agreeable performance standards to evaluate CONSULTANT's performance based upon responsiveness, quality of work, turn around time for the completion of required work and other standards agreed to by the parties. CONSULTANT and TOWN'S Director of Development Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.6 The TOWN agrees to compensate CONSULTANT for services rendered on an hourly basis in accordance with the rates shown in **Exhibit A**. The hourly rates set forth in **Exhibit A** shall be subject to an annual increase based on the Consumer Price Index (CPI) or 5%, whichever is lower.
- 3.7 Each Work Authorization shall specify whether compensation will be on an hourly basis or lump sum, with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.
- 3.8 Travel Expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.
- 3.9 CONSULTANT will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and the percentage of the Work Authorization completed. Within 10 days after receipt of the invoice, the Town shall notify

CONSULTANT, in writing, of any discrepancies or disputed items on the invoice and indicate what corrective action on the part of the CONSULTANT is needed to make the invoice proper. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONSULTANT. The TOWN shall pay the CONSULTANT the undisputed portion of the invoice within thirty (30) days of receipt of the invoice.

- 3.10 If a dispute arises concerning payment of an invoice, the Town Manager or designee shall commence proceedings to resolve the dispute within thirty (30) days after receipt of the invoice. The Town Manager shall make a final determination regarding any disputed portion of the invoice within forty-five (45) days of receipt of the invoice during which time the Town Manager or designee shall meet with the CONSULTANT to seek resolution of the disputed invoice.
- 3.11 The professional services to be rendered by the CONSULTANT shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONSULTANT prior to execution of a Work Authorization shall be at CONSULTANT's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.
- 3.12 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONSULTANT'S services do not exceed \$25,000.00. Any services exceeding \$25,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.
- 3.13 In the event that a Work Authorization for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONSULTANT, at no additional cost to the TOWN, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

SECTION 4. TERM/TERMINATION

- 4.1 **Term of Agreement.** This Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for a period of five years, unless terminated earlier pursuant to this Agreement. At the TOWN's option, this Agreement may be renewed for two successive two-year renewal terms under the same terms and conditions if mutually agreeable to the parties.
- 4.2 **Termination For Convenience.** The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, upon thirty (30) calendar days' written notice to CONSULTANT. If any such termination notice is provided by the TOWN, the CONSULTANT shall immediately cease work on any Work Authorizations

issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT for work completed pursuant to this Agreement to the satisfaction of the TOWN, its reasonable documented costs actually incurred as of the date of the termination notice. Under no circumstances shall the TOWN make payment of profit for services that have not been performed.

- 4.3 **Termination For Cause.** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify and hold the TOWN harmless against any loss pertaining to such termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 4.2 and the provisions of Section 4.2 shall apply.
- 4.4 **Non-Exclusive Agreement.** Notwithstanding the provisions of this Agreement, the Town Manager may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.
- 4.5 **Town Right to Extend.** At the sole discretion of the Town Manager, this Agreement may be extended for a period of up to one hundred fifty (150) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the Town Manager to be in the best interest of the Town. Extensions beyond one hundred fifty (150) days must be approved by the Town Commission.

SECTION 5. CHANGES TO WORK AUTHORIZATIONS

- 5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Authorization consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by a Work Authorization Amendment without invalidating the Work Authorization. Such changes must be contained in a written Work Authorization Amendment executed by the parties in accordance with the provisions of this Agreement, prior to any deviation from the terms of the Work Authorization, including the initiation of any extra work. The Compensation and/or the Completion time may be changed only by Work Authorization Amendment.
- 5.2 **Work Authorization Amendment Defined.** A Work Authorization Amendment shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. A

Work Authorization shall only be modified by an executed Work Authorization Amendment or the issuance of a new Work Authorization.

- 5.3 **Effect of Executed Work Authorization Amendment.** The execution of a Work Authorization Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT and the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. The CONSULTANT, by executing the Work Authorization Amendment, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Authorization Amendment. The CONSULTANT agrees that no claim for delay damages shall be asserted against the TOWN and hereby waives the right to assert any such claim.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

- 7.1 TOWN shall assist CONSULTANT by providing CONSULTANT with available information that is pertinent to the Work Authorization as may be requested in writing by the CONSULTANT and allow reasonable access to pertinent information relating to the services to be performed by CONSULTANT.
- 7.2 TOWN shall provide CONSULTANT access to TOWN property as required for CONSULTANT to perform services under this Agreement or any Work Authorization.

SECTION 8. PROFESSIONAL CONDUCT; CONFLICT OF INTEREST

- 8.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.
- 8.2 CONSULTANT warrants and represents that it shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and Broward County Code of Ethics (County Code Section 1-19), as they may be amended from time to time.

- 8.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 8.4 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
- 8.5 During the term of this Agreement, CONSULTANT agrees not to accept representation of another client that is regulated by or requires development approval from the TOWN or has interests that are directly adverse to TOWN'S interest.
- 8.6 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

- 9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or services provided under this Agreement or any Work Authorization and shall not engage in or commit any discriminatory practice against any person based on race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery in the performance of work under this Agreement or a Work Authorization.
- 9.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

- 10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to this Agreement and any Work Authorization shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within 10 calendar days after written notice requesting delivery of such documents. In no event shall the CONSULTANT use, or permit to be used, any of the documents, without the TOWN'S prior written authorization.
- 10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for a Work Authorization

shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

- 10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.
- 10.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 11. RECORDS/AUDITS

- 11.1 CONSULTANT shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Work Authorization and any work performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Work Authorization or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.
- 11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
 - a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TOWN.
 - b. Upon request from the TOWN's custodian of public records, CONSULTANT shall provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the TOWN.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the Town Manager, at no cost to the TOWN, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the Town in a format that is compatible with the TOWN's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-640-4200, TOWNCLERK@LAUDERDALEBYTHESEA-FL.GOV, OR BY MAIL: TOWN CLERK, 4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 12. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement and any Work Authorizations. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

- 14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld in the TOWN's sole discretion.
- 14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

- 15.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, or costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Authorization.
- 15.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement and each Work Authorization for the above hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15.
- 15.3 Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section 15 shall survive termination of this Agreement.

SECTION 16. INSURANCE

- 16.1 The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The insurance coverage shall be primary insurance with respect to the

CONSULTANT, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The following minimum insurance coverage requirements shall apply on a per project basis:

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONSULTANT shall be allowed to provide services pursuant to this RFQ who is not covered by Worker's Compensation insurance.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONSULTANT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non-Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.
- c. **Comprehensive General Liability:** This insurance shall be written on a "per occurrence" basis only in comprehensive form and shall protect the TOWN and the CONSULTANT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, or \$1,000,000 per occurrence/\$2,000,000 general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage. Defense Costs must be 'outside the limits' of liability.
- d. **Professional Liability:** \$1,000,000 per incident. If coverage is written on a claims-made form, the retroactive date of coverage shall be no later than the inception date of the claims made coverage, unless the prior act policy was extended indefinitely to cover prior period acts. Provisions shall be made to provide coverage beyond the policy year, when necessary. Defense Costs must be 'outside the limits' of liability.

At the Town's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

- e. **Certificate of Insurance:** Concurrent with the execution of this Agreement and prior to the execution of a Work Authorization, the CONSULTANT shall provide the TOWN an original Certificate of Insurance documenting compliance with each required insurance policy. The TOWN is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONSULTANT resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- **Completed Operations** & CG 20 10 04 13 Additional Insured-owners, lessees or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the Town Manager, in the Town Manager's sole discretion.

CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- 16.2 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.
- 16.3 Insurance carriers providing the insurance required by this Agreement or any Work Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the Town shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.
- 16.4 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

- 17.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.
- 17.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

- 18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.
- 18.2 In the event of any litigation arising out of this Agreement or any Work Authorization, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

- 20.1 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction, as applicable, and shall comply with all applicable TOWN Codes, county, state and federal laws, rules and regulations.
- 20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper, as applicable, under similar circumstances. If at any time during the term of any Work Authorization or the construction of a specific project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONSULTANT's documents are

incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services that failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, in equity or otherwise.

- 20.3 The CONSULTANT'S obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or Work Authorization.
- 20.4 CONSULTANT shall comply with all laws, ordinances, and governmental rules, regulations and order, now or at any time during the term of the Agreement, which are applicable to or which affect the work performed under this Agreement or any Work Authorization or any procedures of the CONSULTANT for such work.

SECTION 21. SUBCONTRACTORS

- 21.1 In the event the CONSULTANT requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONSULTANT must secure the prior written approval of the Town Manager.
- 21.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.
- 21.3 No reimbursement or payment shall be made to the CONSULTANT for any subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT and CONSULTANT is solely responsible for use of unapproved subcontractors.
- 21.4 CONSULTANT shall provide the Town Manager with evidence of insurability consistent with the minimum insurance coverage requirements in Section 16 of this Agreement for all subcontractors proposed by CONSULTANT to perform services under this Agreement or any Work Authorization. The subcontractor's insurance shall list the TOWN as an Additional Insured for General Liability and Auto Liability of the subcontractor resulting from operations performed by or on behalf of TOWN in performance of this Agreement or any Work Authorization.

SECTION 22. NOTICES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement and any Work Authorization by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement, or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 24. DISPUTE RESOLUTION

- 24.1 Any dispute concerning performance of this Agreement shall be decided by the TOWN, who shall reduce the decision to writing and serve a copy on the CONSULTANT. The decision shall be final and conclusive unless within 21 calendar days from the date of receipt, the CONSULTANT files with the TOWN a petition for an administrative hearing. The TOWN's decision on the petition shall be final, subject to the CONSULTANT's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the CONSULTANT's ability to pursue any other form of dispute resolution, including, but not limited to, litigation; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 24.2 Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Broward County, Florida.

SECTION 25. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 26. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28. CONFLICTS

- 28.1 In the event of a conflict among the components of the Contract Documents, the following order of precedence shall apply: (1) this Agreement and any written amendments, (2) the documents required to be submitted hereunder, (3) the RFQ, and (4) the CONSULTANT's Proposal.
- 28.2 Each Contract Document referenced in this Agreement is an integral part of the Agreement. Contract Documents, even if not physically attached, are incorporated by reference and should be treated as part of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

SECTION 32. STATE REQUIRED CERTIFICATIONS/AFFIDAVITS.

By entering into this Agreement, the CONSULTANT agrees to review and comply with the following state affidavit requirements:

- 32.1 **Public Entity Crimes Affidavit.** CONSULTANT shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 32.2 **Scrutinized Companies.** CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the CONSULTANT certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in

the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 32.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the TOWN requires all contractors doing business with the TOWN to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The TOWN will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 32.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 32.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXHIBIT B

SCOPE OF SERVICES

The scope of services to be provided by the Selected Firms may include, but is not limited to, the following, all of which shall be performed in accordance with applicable law:

- a) Prepare preliminary or feasibility design reports and/or design alternative recommendations. This may include preparation of conceptual designs, various types of utility modeling, surveying, field data analysis, estimates of probable construction cost and life-cycle cost analysis.
- b) Organize and attend meetings with and/or make presentations to elected officials, TOWN management, homeowner associations, business associations, and other interested stakeholder groups as requested by the TOWN. Prepare recommendations for appropriate community outreach components and processes for project development.
- c) Conduct and/or attend pre-design, design, bidding and bid award meetings for which the TOWN deems attendance is required.
- d) Prepare required bidding/construction documents for the project(s). This may include the preparation of surveys, design plans, technical specifications, cost estimates, permit applications to government agencies, and other related contract documents.
- e) Assist in evaluating bids and making bid award recommendations for construction contract(s).
- f) Provide engineering, management, administration, inspection and value engineering services for projects during construction. This may include responding to contractor's Requests for Information, shop drawing/contractor submittal review and approval, inspection and approval of project improvements or progress, certification of projects from various permitting entities, possible field revisions, and review and approval of contractor pay applications. Evaluate and make recommendations on change orders.
- g) Provide project close-out services. This may include inspection, preliminary and final acceptance of projects, preparation and approval of punch list items, providing as-built record drawings, operation and maintenance manuals, and project certification as required to all permitting agencies.
- h) Identify possible grant funding opportunities and write grant applications or portions thereof for submittal to appropriate agencies.
- i) Act as the TOWN's designated representative and engineer for various governmental engineering functions including review of development responses and issue comments related to compliance with relevant Town Codes, participation in Design Review Committee, issuance or recommendations for issuance of various Town permits, and attend meetings at the TOWN's request.

- j) Provide any other professional services to the TOWN in accordance with the CCNA, including for projects in which the estimated construction cost of each individual project under the contract does not exceed \$7.5 million; a study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for Work of a specified nature as outlined in the contract required by the TOWN, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Town is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, I hereby affirm under penalty of perjury that:

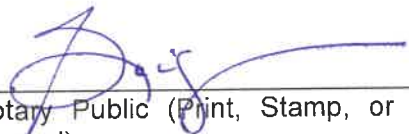
1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Town, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of Caulfield & Wheeler, Inc., a nongovernmental entity.
3. Caulfield & Wheeler, Inc. does not use coercion for labor or services as defined in the relevant section of the law.



OATH OR AFFIRMATION

State of Florida
County of Palm Beach

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 17 day of October, 2024, by John P. Wheeler (name of person) as President (type of authority) for Caulfield & Wheeler, Inc. (name of party on behalf of whom instrument is executed).



Notary Public (Print, Stamp, or Type as Commissioned)

- ☒ Personally known to me; or
____ Produced identification (Type of Identification): _____
____ Did take an oath; or
____ Did not take an oath



BOBBI ANNE SWINEHART
Notary Public
State of Florida
Comm# HH405256
Expires 9/25/2027

**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Town may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Town which would grant the entity access to an individual's personal identifying information.

1. Caulfield & Wheeler, Inc. ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

OATH OR AFFIRMATION

State of Florida
County of Palm Beach

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 17 day of October, 2024, by John F. Wheeler (name of person) as President (type of authority) for Caulfield & Wheeler (name of party on behalf of whom instrument is executed).


Notary Public (Print, Stamp, or Type as Commissioned)

- ☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☐ Did take an oath; or
☐ Did not take an oath



BOBBI ANNE SWISHART
Notary Public
State of Florida
Comm# HH405256
Expires 9/25/2027



CAUL&WH-01

MSCHEER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/21/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Kore Insurance Holdings, LLC P.O. Box 473 354 Eisenhower Parkway, Plaza 1 Livingston, NJ 07039	CONTACT NAME:		
	PHONE (A/C, No, Ext): (973) 994-3131	FAX (A/C, No): (973) 996-3161	
INSURED CAULFIELD & WHEELER, INC. 7900 GLADES ROAD #100 Boca Raton, FL 33434	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Continental Casualty Company		20443
	INSURER B : Continental Insurance Company		35289
	INSURER C :		
	INSURER D :		
INSURER E :			
INSURER F :			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC ☐ OTHER:	X		7091745786	4/1/2024	4/1/2025	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	X		7091747778	4/1/2024	4/1/2025	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			7091746260	4/1/2024	4/1/2025	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTH-ER ☐	
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
A	Professional Liab.			AEH591928817	4/1/2024	4/1/2025	Claims-Made	3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate holder is included as an additional insured on a primary and non-contributory basis on the general liability for ongoing and completed operations and as additional insured on the auto liability when required by written contract.

Professional Liability; Claims-made form, Full Prior Acts. Deductible \$100,000 Per Claim. Defense within limits.

CERTIFICATE HOLDER

CANCELLATION

Town of Lauderdale-By-the-Sea, Florida 4501 Ocean Drive Lauderdale By The Sea, FL 33308	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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WHEREAS, on July 24, 2024, the Town of Lauderdale-By-The-Sea (the “Town”) issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects, in accordance with Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (CCNA) (the “Services”); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39, which approved the rankings of respondents to the RFQ and authorized the Town Manager to negotiate a continuing professional services agreement with the top seven ranked qualified firms, including Carnahan, Proctor and Cross, Inc. (the “Consultant”) for professional engineering, landscape architecture, survey and mapping, and traffic engineering services (the “Services”); and

WHEREAS, the Town Manager has negotiated the agreement attached hereto as Exhibit “1” (the “Agreement”) with the Consultant for the Services and the Town Commission wishes to approve the Agreement; and

WHEREAS, the Town Commission finds that it is in the best interests of the Town to proceed as indicated in this Resolution and approve the Agreement with the Consultant for the Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval. The Town Commission hereby approves the Agreement with the Consultant for the Services.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with the Consultant, in substantially the form attached hereto as Exhibit 1, subject to the final approval of the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this day of November 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT 1

**CONTINUING PROFESSIONAL SERVICES AGREEMENT
BETWEEN
TOWN OF LAUDERDALE-BY-THE-SEA
AND
CARNAHAN, PROCTOR AND CROSS, INC.**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation (the “TOWN”) and Carnahan, Proctor and Cross, Inc., a Florida profit corporation (the “CONSULTANT”).

WHEREAS, pursuant to Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (“CCNA”), on July 24, 2024, the TOWN issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects; and

WHEREAS, in response to the RFQ, the Consultant submitted its qualifications (the “Qualifications,” which are incorporated herein by reference) for professional engineering, landscape architecture, survey and mapping, and traffic engineering services (the “Services,” as herein defined); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39 selecting the CONSULTANT as one of the top-ranked firms to perform the Services and authorized the Town Manager to negotiate and execute a contract with the CONSULTANT; and

WHEREAS, the TOWN and CONSULTANT, through mutual negotiation, have agreed upon a rate schedule as set forth in **Exhibit A** (the “Rate Schedule”) in connection with the Services; and

WHEREAS, the CONSULTANT will perform the Services for the TOWN, as further described in **Exhibit B** attached hereto, on an as-requested, per-project basis; and

WHEREAS, the TOWN desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Additional definitions provided for in the RFQ are also incorporated herein.

- 2.1 **Contract Documents** refers to this Agreement, the Request for Qualifications No. 24-07-01 RFQ), incorporated herein by reference, CONSULTANT's response to the RFQ, incorporated herein by reference, all specifications, Certificate(s) of Insurance, Work Authorizations and all written amendments issued on or after the effective date of this Agreement.
- 2.2 **Compensation** means the total amount paid by the TOWN for the CONSULTANT's professional services pursuant to an executed Work Authorization, exclusive of Reimbursable Expenses.
- 2.3 **Reimbursable Expenses** means the expenses directly attributable to the Work Authorization that are not Compensation in the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONSULTANT. Reimbursable Expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified the Work Authorization; travel expenses as provided in Paragraph 3.4 of this Agreement. Travel Expenses are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager.
- 2.4 **Subcontractor Fee** means the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.
- 2.5 **Work Authorization** means the document issued by TOWN to a CONSULTANT authorizing a specific scope of services, the Compensation to be paid, the time frame to complete the work and other project specific details.

SECTION 3. WORK AUTHORIZATIONS; SCOPE OF SERVICES; COMPENSATION

- 3.1 In accordance with the CCNA, the CONSULTANT shall provide professional services to the TOWN for projects that are specified in Work Authorizations that may be approved from time to time by either the Town Commission or Town Manager as authorized by this Section 3. The TOWN reserves the right to select one or more firms to perform any specific project.
- 3.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONSULTANT for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide such professional services. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 3.3 (a) through (g). The Town Manager or designated representative and CONSULTANT shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 3. Each Work Authorization shall incorporate this Agreement by reference.

- 3.3 The TOWN and CONSULTANT shall utilize a supplemental agreement referred to as a Work Authorization which will, by mutual agreement, set forth, among other things, the following:
- a. The Scope of Services;
 - b. The tasks to be performed, including any deliverables;
 - c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
 - d. The amount and type of Compensation requested and the proposed payment schedule;
 - e. The CONSULTANT's Project Manager and any subcontractors assigned to the Work Authorization;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
 - g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.
- 3.4 Upon the completion of each task assigned to CONSULTANT, CONSULTANT shall provide the applicable records to TOWN. All documents including, but not limited to, electronic files, drawings and specifications prepared in connection with the project.
- 3.5 CONSULTANT acknowledges that TOWN and CONSULTANT shall establish mutually agreeable performance standards to evaluate CONSULTANT's performance based upon responsiveness, quality of work, turn around time for the completion of required work and other standards agreed to by the parties. CONSULTANT and TOWN'S Director of Development Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.6 The TOWN agrees to compensate CONSULTANT for services rendered on an hourly basis in accordance with the rates shown in **Exhibit A**. The hourly rates set forth in **Exhibit A** shall be subject to an annual increase based on the Consumer Price Index (CPI) or 5%, whichever is lower.
- 3.7 Each Work Authorization shall specify whether compensation will be on an hourly basis or lump sum, with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.
- 3.8 Travel Expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.
- 3.9 CONSULTANT will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and the percentage of the Work Authorization completed. Within 10 days after receipt of the invoice, the Town shall notify

CONSULTANT, in writing, of any discrepancies or disputed items on the invoice and indicate what corrective action on the part of the CONSULTANT is needed to make the invoice proper. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONSULTANT. The TOWN shall pay the CONSULTANT the undisputed portion of the invoice within thirty (30) days of receipt of the invoice.

- 3.10 If a dispute arises concerning payment of an invoice, the Town Manager or designee shall commence proceedings to resolve the dispute within thirty (30) days after receipt of the invoice. The Town Manager shall make a final determination regarding any disputed portion of the invoice within forty-five (45) days of receipt of the invoice during which time the Town Manager or designee shall meet with the CONSULTANT to seek resolution of the disputed invoice.
- 3.11 The professional services to be rendered by the CONSULTANT shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONSULTANT prior to execution of a Work Authorization shall be at CONSULTANT's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.
- 3.12 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONSULTANT'S services do not exceed \$25,000.00. Any services exceeding \$25,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.
- 3.13 In the event that a Work Authorization for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONSULTANT, at no additional cost to the TOWN, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

SECTION 4. TERM/TERMINATION

- 4.1 **Term of Agreement.** This Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for a period of five years, unless terminated earlier pursuant to this Agreement. At the TOWN's option, this Agreement may be renewed for two successive two-year renewal terms under the same terms and conditions if mutually agreeable to the parties.
- 4.2 **Termination For Convenience.** The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, upon thirty (30) calendar days' written notice to CONSULTANT. If any such termination notice is provided by the TOWN, the CONSULTANT shall immediately cease work on any Work Authorizations

issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT for work completed pursuant to this Agreement to the satisfaction of the TOWN, its reasonable documented costs actually incurred as of the date of the termination notice. Under no circumstances shall the TOWN make payment of profit for services that have not been performed.

- 4.3 **Termination For Cause.** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify and hold the TOWN harmless against any loss pertaining to such termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 4.2 and the provisions of Section 4.2 shall apply.
- 4.4 **Non-Exclusive Agreement.** Notwithstanding the provisions of this Agreement, the Town Manager may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.
- 4.5 **Town Right to Extend.** At the sole discretion of the Town Manager, this Agreement may be extended for a period of up to one hundred fifty (150) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the Town Manager to be in the best interest of the Town. Extensions beyond one hundred fifty (150) days must be approved by the Town Commission.

SECTION 5. CHANGES TO WORK AUTHORIZATIONS

- 5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Authorization consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by a Work Authorization Amendment without invalidating the Work Authorization. Such changes must be contained in a written Work Authorization Amendment executed by the parties in accordance with the provisions of this Agreement, prior to any deviation from the terms of the Work Authorization, including the initiation of any extra work. The Compensation and/or the Completion time may be changed only by Work Authorization Amendment.
- 5.2 **Work Authorization Amendment Defined.** A Work Authorization Amendment shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. A

Work Authorization shall only be modified by an executed Work Authorization Amendment or the issuance of a new Work Authorization.

- 5.3 **Effect of Executed Work Authorization Amendment.** The execution of a Work Authorization Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT and the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. The CONSULTANT, by executing the Work Authorization Amendment, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Authorization Amendment. The CONSULTANT agrees that no claim for delay damages shall be asserted against the TOWN and hereby waives the right to assert any such claim.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

- 7.1 TOWN shall assist CONSULTANT by providing CONSULTANT with available information that is pertinent to the Work Authorization as may be requested in writing by the CONSULTANT and allow reasonable access to pertinent information relating to the services to be performed by CONSULTANT.
- 7.2 TOWN shall provide CONSULTANT access to TOWN property as required for CONSULTANT to perform services under this Agreement or any Work Authorization.

SECTION 8. PROFESSIONAL CONDUCT; CONFLICT OF INTEREST

- 8.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.
- 8.2 CONSULTANT warrants and represents that it shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and Broward County Code of Ethics (County Code Section 1-19), as they may be amended from time to time.

- 8.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 8.4 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
- 8.5 During the term of this Agreement, CONSULTANT agrees not to accept representation of another client that is regulated by or requires development approval from the TOWN or has interests that are directly adverse to TOWN'S interest.
- 8.6 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

- 9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or services provided under this Agreement or any Work Authorization and shall not engage in or commit any discriminatory practice against any person based on race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery in the performance of work under this Agreement or a Work Authorization.
- 9.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

- 10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to this Agreement and any Work Authorization shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within 10 calendar days after written notice requesting delivery of such documents. In no event shall the CONSULTANT use, or permit to be used, any of the documents, without the TOWN'S prior written authorization.
- 10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for a Work Authorization

shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

- 10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.
- 10.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 11. RECORDS/AUDITS

- 11.1 CONSULTANT shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Work Authorization and any work performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Work Authorization or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.
- 11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
 - a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TOWN.
 - b. Upon request from the TOWN's custodian of public records, CONSULTANT shall provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the TOWN.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the Town Manager, at no cost to the TOWN, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the Town in a format that is compatible with the TOWN's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-640-4200, TOWNCLERK@LAUDERDALEBYTHESEA-FL.GOV, OR BY MAIL: TOWN CLERK, 4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 12. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement and any Work Authorizations. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

- 14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld in the TOWN's sole discretion.
- 14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

- 15.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, or costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Authorization.
- 15.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement and each Work Authorization for the above hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15.
- 15.3 Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section 15 shall survive termination of this Agreement.

SECTION 16. INSURANCE

- 16.1 The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The insurance coverage shall be primary insurance with respect to the

CONSULTANT, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The following minimum insurance coverage requirements shall apply on a per project basis:

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONSULTANT shall be allowed to provide services pursuant to this RFQ who is not covered by Worker's Compensation insurance.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONSULTANT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non-Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.
- c. **Comprehensive General Liability:** This insurance shall be written on a "per occurrence" basis only in comprehensive form and shall protect the TOWN and the CONSULTANT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, or \$1,000,000 per occurrence/\$2,000,000 general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage. Defense Costs must be 'outside the limits' of liability.
- d. **Professional Liability:** \$1,000,000 per incident. If coverage is written on a claims-made form, the retroactive date of coverage shall be no later than the inception date of the claims made coverage, unless the prior act policy was extended indefinitely to cover prior period acts. Provisions shall be made to provide coverage beyond the policy year, when necessary. Defense Costs must be 'outside the limits' of liability.

At the Town's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

- e. **Certificate of Insurance:** Concurrent with the execution of this Agreement and prior to the execution of a Work Authorization, the CONSULTANT shall provide the TOWN an original Certificate of Insurance documenting compliance with each required insurance policy. The TOWN is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONSULTANT resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- **Completed Operations** & CG 20 10 04 13 Additional Insured-owners, lessees or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the Town Manager, in the Town Manager's sole discretion.

CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- 16.2 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.
- 16.3 Insurance carriers providing the insurance required by this Agreement or any Work Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the Town shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.
- 16.4 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

- 17.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.
- 17.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

- 18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.
- 18.2 In the event of any litigation arising out of this Agreement or any Work Authorization, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

- 20.1 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction, as applicable, and shall comply with all applicable TOWN Codes, county, state and federal laws, rules and regulations.
- 20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper, as applicable, under similar circumstances. If at any time during the term of any Work Authorization or the construction of a specific project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONSULTANT's documents are

incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services that failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, in equity or otherwise.

- 20.3 The CONSULTANT'S obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or Work Authorization.
- 20.4 CONSULTANT shall comply with all laws, ordinances, and governmental rules, regulations and order, now or at any time during the term of the Agreement, which are applicable to or which affect the work performed under this Agreement or any Work Authorization or any procedures of the CONSULTANT for such work.

SECTION 21. SUBCONTRACTORS

- 21.1 In the event the CONSULTANT requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONSULTANT must secure the prior written approval of the Town Manager.
- 21.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.
- 21.3 No reimbursement or payment shall be made to the CONSULTANT for any subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT and CONSULTANT is solely responsible for use of unapproved subcontractors.
- 21.4 CONSULTANT shall provide the Town Manager with evidence of insurability consistent with the minimum insurance coverage requirements in Section 16 of this Agreement for all subcontractors proposed by CONSULTANT to perform services under this Agreement or any Work Authorization. The subcontractor's insurance shall list the TOWN as an Additional Insured for General Liability and Auto Liability of the subcontractor resulting from operations performed by or on behalf of TOWN in performance of this Agreement or any Work Authorization.

SECTION 22. NOTICES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement and any Work Authorization by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement, or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 24. DISPUTE RESOLUTION

- 24.1 Any dispute concerning performance of this Agreement shall be decided by the TOWN, who shall reduce the decision to writing and serve a copy on the CONSULTANT. The decision shall be final and conclusive unless within 21 calendar days from the date of receipt, the CONSULTANT files with the TOWN a petition for an administrative hearing. The TOWN's decision on the petition shall be final, subject to the CONSULTANT's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the CONSULTANT's ability to pursue any other form of dispute resolution, including, but not limited to, litigation; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 24.2 Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Broward County, Florida.

SECTION 25. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 26. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28. CONFLICTS

- 28.1 In the event of a conflict among the components of the Contract Documents, the following order of precedence shall apply: (1) this Agreement and any written amendments, (2) the documents required to be submitted hereunder, (3) the RFQ, and (4) the CONSULTANT's Proposal.
- 28.2 Each Contract Document referenced in this Agreement is an integral part of the Agreement. Contract Documents, even if not physically attached, are incorporated by reference and should be treated as part of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

SECTION 32. STATE REQUIRED CERTIFICATIONS/AFFIDAVITS.

By entering into this Agreement, the CONSULTANT agrees to review and comply with the following state affidavit requirements:

- 32.1 **Public Entity Crimes Affidavit.** CONSULTANT shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 32.2 **Scrutinized Companies.** CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the CONSULTANT certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in

the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 32.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the TOWN requires all contractors doing business with the TOWN to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The TOWN will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 32.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 32.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXHIBIT A Rates

FEE SCHEDULE 2024

CLASSIFICATION	HOURLY RATES	CLASSIFICATION	HOURLY RATES
Principal Engineer	\$ 345.00	CEI Senior Project Engineer	\$ 275.00
Chief Engineer 2	\$ 315.00	CEI Project Admin/Engineer	\$ 210.00
Chief Engineer 1	\$ 295.00	CEI Assistant Project Admin/Engineer	\$ 150.00
Project Manager 3	\$ 280.00	CEI Contract Support	\$ 135.00
Project Manager 2	\$ 250.00	CEI Assistant Contract Support	\$ 95.00
Project Manager 1	\$ 225.00	CEI Resident Compliance Specialist	\$ 95.00
Senior Engineer 2	\$ 275.00	CEI Senior Building/Electrical Inspector	\$ 180.00
Senior Engineer 1	\$ 245.00	CEI Building/Electrical Inspector	\$ 150.00
Senior Engineering Technician	\$ 125.00	CEI Senior Inspector	\$ 140.00
Engineering Technician	\$ 105.00	CEI Senior Engineer Intern	\$ 130.00
Engineer 2	\$ 215.00	CEI Senior Landscape Inspector	\$ 120.00
Engineer 1	\$ 170.00	CEI Inspector	\$ 105.00
Engineering Intern	\$ 125.00	CEI Engineer Intern	\$ 90.00
Chief Designer	\$ 195.00	CEI Inspector Aide	\$ 75.00
Senior Designer	\$ 165.00	CEI Secretary/Clerk Typist	\$ 85.00
Designer	\$ 145.00	Chief Surveyor	\$ 255.00
Design Intern	\$ 75.00	Senior Surveyor 2	\$ 225.00
Senior Inspector	\$ 145.00	Senior Surveyor 1	\$ 165.00
Inspector	\$ 105.00	Survey Crew Chief	\$ 105.00
GIS Specialist	\$ 135.00	Survey Instrument Operator	\$ 80.00
Land Planner	\$ 165.00	Survey Rod Person	\$ 75.00
Planner	\$ 120.00	Survey CADD/Computer Technician	\$ 150.00
Senior Landscape Architect	\$ 230.00	SUE Technician 3	\$ 150.00
Landscape Architect	\$ 150.00	SUE Technician 2	\$ 100.00
CADD/Computer Technician	\$ 115.00	Survey UAV Operator	\$ 180.00
Secretary/Clerical	\$ 115.00		



Dan Tintner, PE
Senior Vice President
DTintner@CPC-eng.com
954.593.8774

EXHIBIT B

SCOPE OF SERVICES

The scope of services to be provided by the Selected Firms may include, but is not limited to, the following, all of which shall be performed in accordance with applicable law:

- a) Prepare preliminary or feasibility design reports and/or design alternative recommendations. This may include preparation of conceptual designs, various types of utility modeling, surveying, field data analysis, estimates of probable construction cost and life-cycle cost analysis.
- b) Organize and attend meetings with and/or make presentations to elected officials, TOWN management, homeowner associations, business associations, and other interested stakeholder groups as requested by the TOWN. Prepare recommendations for appropriate community outreach components and processes for project development.
- c) Conduct and/or attend pre-design, design, bidding and bid award meetings for which the TOWN deems attendance is required.
- d) Prepare required bidding/construction documents for the project(s). This may include the preparation of surveys, design plans, technical specifications, cost estimates, permit applications to government agencies, and other related contract documents.
- e) Assist in evaluating bids and making bid award recommendations for construction contract(s).
- f) Provide engineering, management, administration, inspection and value engineering services for projects during construction. This may include responding to contractor's Requests for Information, shop drawing/contractor submittal review and approval, inspection and approval of project improvements or progress, certification of projects from various permitting entities, possible field revisions, and review and approval of contractor pay applications. Evaluate and make recommendations on change orders.
- g) Provide project close-out services. This may include inspection, preliminary and final acceptance of projects, preparation and approval of punch list items, providing as-built record drawings, operation and maintenance manuals, and project certification as required to all permitting agencies.
- h) Identify possible grant funding opportunities and write grant applications or portions thereof for submittal to appropriate agencies.
- i) Act as the TOWN's designated representative and engineer for various governmental engineering functions including review of development responses and issue comments related to compliance with relevant Town Codes, participation in Design Review Committee, issuance or recommendations for issuance of various Town permits, and attend meetings at the TOWN's request.

- j) Provide any other professional services to the TOWN in accordance with the CCNA, including for projects in which the estimated construction cost of each individual project under the contract does not exceed \$7.5 million; a study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for Work of a specified nature as outlined in the contract required by the TOWN, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Town is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, I **hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Town, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of Carnahan, Proctor and Cross, Inc., a nongovernmental entity.
3. Carnahan, Proctor and Cross, Inc. does not use coercion for labor or services as defined in the relevant section of the law.

Signed on this 17th day of October, 2024.

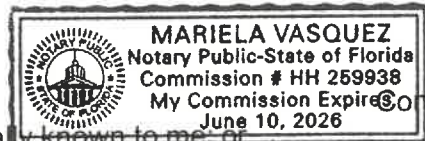
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Signature of Affiant

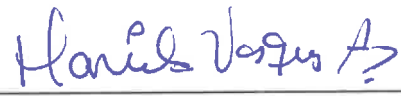
Gregory Proctor, PE
Printed Name

OATH OR AFFIRMATION

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 17th day of October, 2024, by Gregory Proctor, PE
(name of person) as President (type of authority) for
Carnahan, Proctor and Cross, Inc. (name of party on behalf of whom instrument is executed).




Notary Public (Print, Stamp, or Type as
Commissioned)

- ☒ Personally known to me or
Produced identification (Type of Identification: _____)
Did take an oath; or
Did not take an oath

**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Town may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Town which would grant the entity access to an individual's personal identifying information.

1. Carnahan, Proctor and Cross, Inc. ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

Signed on this 17th day of October, 2024.

By: [Signature]
Signature of Affiant

Gregory Proctor, PE
Printed Name

OATH OR AFFIRMATION

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 17th day of October, 2024, by Gregory Proctor, PE (name of person) as President (type of authority) for Carnahan, Proctor and Cross, Inc. (name of party on behalf of whom instrument is executed).



[Signature]

Notary Public (Print, Stamp, or Type as Commissioned)

- ☒ Personally known to me, or
Produced identification (Type of Identification: _____)
Did take an oath; or
Did not take an oath



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/19/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Keyes Coverage Insurance 5900 Hiatus Road Tamarac FL 33321	CONTACT NAME: Pam Harding PHONE (A/C, No, Ext): 954-724-7000 E-MAIL ADDRESS: pharding@keyescoverage.com FAX (A/C, No): 954-724-7010																					
INSURED Carnahan Proctor & Cross Inc 814 S. Military Trail Deerfield Beach FL 33442	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A :</td><td>Bridgefield Employers Ins Co</td><td>10701</td></tr><tr><td>INSURER B :</td><td>The Continental Insurance Company</td><td>35289</td></tr><tr><td>INSURER C :</td><td>Valley Forge Insurance Company</td><td>20508</td></tr><tr><td>INSURER D :</td><td>SiriusPoint Specialty Insurance Corporation</td><td></td></tr><tr><td>INSURER E :</td><td></td><td></td></tr><tr><td>INSURER F :</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	Bridgefield Employers Ins Co	10701	INSURER B :	The Continental Insurance Company	35289	INSURER C :	Valley Forge Insurance Company	20508	INSURER D :	SiriusPoint Specialty Insurance Corporation		INSURER E :			INSURER F :		
INSURER(S) AFFORDING COVERAGE		NAIC #																				
INSURER A :	Bridgefield Employers Ins Co	10701																				
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INSURER C :	Valley Forge Insurance Company	20508																				
INSURER D :	SiriusPoint Specialty Insurance Corporation																					
INSURER E :																						
INSURER F :																						

COVERAGES**CERTIFICATE NUMBER:** 155185746**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			7063744679	12/31/2023	12/31/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Ded: None \$
C	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS			7063744665	12/31/2023	12/31/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			7063744682	12/31/2023	12/31/2024	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	83056388	3/8/2024	3/8/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability Claims Made Basis			PROVAE000012400	8/19/2024	8/19/2025	Aggregate 3,000,000 Each Claim 3,000,000 Retention 50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Continuing Services Agreement

The Town of Lauderdale-By-The-Sea hereby listed as additional insured in respect to General Liability and Auto Liability on a primary and non-contributory basis when required by written contract as per attached blanket additional insured endorsement form 421-2915 1214.

CERTIFICATE HOLDER**CANCELLATION** 30 Days Notice/10 Days for Non-PayTown of Lauderdale-By-The-Sea
4501 N Ocean Drive
Lauderdale By The Sea FL 33308

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WALTERS ZACKRIA ASSOCIATES, PLLC PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL ARCHITECTURE SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

WHEREAS, on July 24, 2024, the Town of Lauderdale-By-The-Sea (the “Town”) issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects, in accordance with Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (CCNA) (the “Services”); and

WHEREAS, fifteen sealed responses were received by the RFQ deadline, and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39, which approved the rankings of respondents to the RFQ and authorized the Town Manager to negotiate a continuing professional services agreement with the top seven ranked qualified firms, including Walters Zackria Associates, PLLC (the “Consultant”) for professional architecture services (the “Services”); and

WHEREAS, the Town Manager has negotiated the agreement attached hereto as Exhibit “1” (the “Agreement”) with the Consultant for the Services and the Town Commission wishes to approve the Agreement; and

WHEREAS, the Town Commission finds that it is in the best interests of the Town to proceed as indicated in this Resolution and approve the Agreement with the Consultant for the Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval. The Town Commission hereby approves the Agreement with the Consultant for the Services.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with the Consultant, in substantially the form attached hereto as Exhibit 1, subject to the final approval of the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of November 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT 1

CONTINUING PROFESSIONAL SERVICES AGREEMENT BETWEEN TOWN OF LAUDERDALE-BY-THE-SEA AND WALTERS ZACKRIA ASSOCIATES, PLLC

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation (the “TOWN”) and Walters Zackria Associates, PLLC, a Florida limited liability company (the “CONSULTANT”).

WHEREAS, pursuant to Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (“CCNA”), on July 24, 2024, the TOWN issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects; and

WHEREAS, in response to the RFQ, the Consultant submitted its qualifications (the “Qualifications,” which are incorporated herein by reference) for professional architecture services (the “Services,” as herein defined); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39 selecting the CONSULTANT as one of the top-ranked firms to perform the Services and authorized the Town Manager to negotiate and execute a contract with the CONSULTANT; and

WHEREAS, the TOWN and CONSULTANT, through mutual negotiation, have agreed upon a rate schedule as set forth in **Exhibit A** (the “Rate Schedule”) in connection with the Services; and

WHEREAS, the CONSULTANT will perform the Services for the TOWN, as further described in **Exhibit B** attached hereto, on an as-requested, per-project basis; and

WHEREAS, the TOWN desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Additional definitions provided for in the RFQ are also incorporated herein.

- 2.1 **Contract Documents** refers to this Agreement, the Request for Qualifications No. 24-07-01 RFQ), incorporated herein by reference, CONSULTANT's response to the RFQ, incorporated herein by reference, all specifications, Certificate(s) of Insurance, Work Authorizations and all written amendments issued on or after the effective date of this Agreement.
- 2.2 **Compensation** means the total amount paid by the TOWN for the CONSULTANT's professional services pursuant to an executed Work Authorization, exclusive of Reimbursable Expenses.
- 2.3 **Reimbursable Expenses** means the expenses directly attributable to the Work Authorization that are not Compensation in the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONSULTANT. Reimbursable Expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified the Work Authorization; travel expenses as provided in Paragraph 3.4 of this Agreement. Travel Expenses are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager.
- 2.4 **Subcontractor Fee** means the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.
- 2.5 **Work Authorization** means the document issued by TOWN to a CONSULTANT authorizing a specific scope of services, the Compensation to be paid, the time frame to complete the work and other project specific details.

SECTION 3. WORK AUTHORIZATIONS; SCOPE OF SERVICES; COMPENSATION

- 3.1 In accordance with the CCNA, the CONSULTANT shall provide professional services to the TOWN for projects that are specified in Work Authorizations that may be approved from time to time by either the Town Commission or Town Manager as authorized by this Section 3. The TOWN reserves the right to select one or more firms to perform any specific project.
- 3.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONSULTANT for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide such professional services. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 3.3 (a) through (g). The Town Manager or designated representative and CONSULTANT shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 3. Each Work Authorization shall incorporate this Agreement by reference.

- 3.3 The TOWN and CONSULTANT shall utilize a supplemental agreement referred to as a Work Authorization which will, by mutual agreement, set forth, among other things, the following:
- a. The Scope of Services;
 - b. The tasks to be performed, including any deliverables;
 - c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
 - d. The amount and type of Compensation requested and the proposed payment schedule;
 - e. The CONSULTANT's Project Manager and any subcontractors assigned to the Work Authorization;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
 - g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.
- 3.4 Upon the completion of each task assigned to CONSULTANT, CONSULTANT shall provide the applicable records to TOWN. All documents including, but not limited to, electronic files, drawings and specifications prepared in connection with the project.
- 3.5 CONSULTANT acknowledges that TOWN and CONSULTANT shall establish mutually agreeable performance standards to evaluate CONSULTANT's performance based upon responsiveness, quality of work, turn around time for the completion of required work and other standards agreed to by the parties. CONSULTANT and TOWN'S Director of Development Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.6 The TOWN agrees to compensate CONSULTANT for services rendered on an hourly basis in accordance with the rates shown in **Exhibit A**. The hourly rates set forth in **Exhibit A** shall be subject to an annual increase based on the Consumer Price Index (CPI) or 5%, whichever is lower.
- 3.7 Each Work Authorization shall specify whether compensation will be on an hourly basis or lump sum, with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.
- 3.8 Travel Expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.
- 3.9 CONSULTANT will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and the percentage of the Work Authorization completed. Within 10 days after receipt of the invoice, the Town shall notify

CONSULTANT, in writing, of any discrepancies or disputed items on the invoice and indicate what corrective action on the part of the CONSULTANT is needed to make the invoice proper. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONSULTANT. The TOWN shall pay the CONSULTANT the undisputed portion of the invoice within thirty (30) days of receipt of the invoice.

- 3.10 If a dispute arises concerning payment of an invoice, the Town Manager or designee shall commence proceedings to resolve the dispute within thirty (30) days after receipt of the invoice. The Town Manager shall make a final determination regarding any disputed portion of the invoice within forty-five (45) days of receipt of the invoice during which time the Town Manager or designee shall meet with the CONSULTANT to seek resolution of the disputed invoice.
- 3.11 The professional services to be rendered by the CONSULTANT shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONSULTANT prior to execution of a Work Authorization shall be at CONSULTANT's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.
- 3.12 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONSULTANT'S services do not exceed \$25,000.00. Any services exceeding \$25,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.
- 3.13 In the event that a Work Authorization for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONSULTANT, at no additional cost to the TOWN, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

SECTION 4. TERM/TERMINATION

- 4.1 **Term of Agreement.** This Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for a period of five years, unless terminated earlier pursuant to this Agreement. At the TOWN's option, this Agreement may be renewed for two successive two-year renewal terms under the same terms and conditions if mutually agreeable to the parties.
- 4.2 **Termination For Convenience.** The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, upon thirty (30) calendar days' written notice to CONSULTANT. If any such termination notice is provided by the TOWN, the CONSULTANT shall immediately cease work on any Work Authorizations

issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT for work completed pursuant to this Agreement to the satisfaction of the TOWN, its reasonable documented costs actually incurred as of the date of the termination notice. Under no circumstances shall the TOWN make payment of profit for services that have not been performed.

- 4.3 **Termination For Cause.** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify and hold the TOWN harmless against any loss pertaining to such termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 4.2 and the provisions of Section 4.2 shall apply.
- 4.4 **Non-Exclusive Agreement.** Notwithstanding the provisions of this Agreement, the Town Manager may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.
- 4.5 **Town Right to Extend.** At the sole discretion of the Town Manager, this Agreement may be extended for a period of up to one hundred fifty (150) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the Town Manager to be in the best interest of the Town. Extensions beyond one hundred fifty (150) days must be approved by the Town Commission.

SECTION 5. CHANGES TO WORK AUTHORIZATIONS

- 5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Authorization consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by a Work Authorization Amendment without invalidating the Work Authorization. Such changes must be contained in a written Work Authorization Amendment executed by the parties in accordance with the provisions of this Agreement, prior to any deviation from the terms of the Work Authorization, including the initiation of any extra work. The Compensation and/or the Completion time may be changed only by Work Authorization Amendment.
- 5.2 **Work Authorization Amendment Defined.** A Work Authorization Amendment shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. A

Work Authorization shall only be modified by an executed Work Authorization Amendment or the issuance of a new Work Authorization.

- 5.3 **Effect of Executed Work Authorization Amendment.** The execution of a Work Authorization Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT and the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. The CONSULTANT, by executing the Work Authorization Amendment, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Authorization Amendment. The CONSULTANT agrees that no claim for delay damages shall be asserted against the TOWN and hereby waives the right to assert any such claim.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

- 7.1 TOWN shall assist CONSULTANT by providing CONSULTANT with available information that is pertinent to the Work Authorization as may be requested in writing by the CONSULTANT and allow reasonable access to pertinent information relating to the services to be performed by CONSULTANT.
- 7.2 TOWN shall provide CONSULTANT access to TOWN property as required for CONSULTANT to perform services under this Agreement or any Work Authorization.

SECTION 8. PROFESSIONAL CONDUCT; CONFLICT OF INTEREST

- 8.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.
- 8.2 CONSULTANT warrants and represents that it shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and Broward County Code of Ethics (County Code Section 1-19), as they may be amended from time to time.

- 8.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 8.4 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
- 8.5 During the term of this Agreement, CONSULTANT agrees not to accept representation of another client that is regulated by or requires development approval from the TOWN or has interests that are directly adverse to TOWN'S interest.
- 8.6 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

- 9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or services provided under this Agreement or any Work Authorization and shall not engage in or commit any discriminatory practice against any person based on race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery in the performance of work under this Agreement or a Work Authorization.
- 9.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

- 10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to this Agreement and any Work Authorization shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within 10 calendar days after written notice requesting delivery of such documents. In no event shall the CONSULTANT use, or permit to be used, any of the documents, without the TOWN'S prior written authorization.
- 10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for a Work Authorization

shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

- 10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.
- 10.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 11. RECORDS/AUDITS

- 11.1 CONSULTANT shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Work Authorization and any work performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Work Authorization or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.
- 11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
 - a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TOWN.
 - b. Upon request from the TOWN's custodian of public records, CONSULTANT shall provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the TOWN.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the Town Manager, at no cost to the TOWN, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the Town in a format that is compatible with the TOWN's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-640-4200, TOWNCLERK@LAUDERDALEBYTHESEA-FL.GOV, OR BY MAIL: TOWN CLERK, 4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 12. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement and any Work Authorizations. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

- 14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld in the TOWN's sole discretion.
- 14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

- 15.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, or costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Authorization.
- 15.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement and each Work Authorization for the above hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15.
- 15.3 Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section 15 shall survive termination of this Agreement.

SECTION 16. INSURANCE

- 16.1 The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The insurance coverage shall be primary insurance with respect to the

CONSULTANT, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The following minimum insurance coverage requirements shall apply on a per project basis:

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONSULTANT shall be allowed to provide services pursuant to this RFQ who is not covered by Worker's Compensation insurance.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONSULTANT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non-Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.
- c. **Comprehensive General Liability:** This insurance shall be written on a "per occurrence" basis only in comprehensive form and shall protect the TOWN and the CONSULTANT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, or \$1,000,000 per occurrence/\$2,000,000 general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage. Defense Costs must be 'outside the limits' of liability.
- d. **Professional Liability:** \$1,000,000 per incident. If coverage is written on a claims-made form, the retroactive date of coverage shall be no later than the inception date of the claims made coverage, unless the prior act policy was extended indefinitely to cover prior period acts. Provisions shall be made to provide coverage beyond the policy year, when necessary. Defense Costs must be 'outside the limits' of liability.

At the Town's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

- e. **Certificate of Insurance:** Concurrent with the execution of this Agreement and prior to the execution of a Work Authorization, the CONSULTANT shall provide the TOWN an original Certificate of Insurance documenting compliance with each required insurance policy. The TOWN is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONSULTANT resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- **Completed Operations** & CG 20 10 04 13 Additional Insured-owners, lessees or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the Town Manager, in the Town Manager's sole discretion.

CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- 16.2 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.
- 16.3 Insurance carriers providing the insurance required by this Agreement or any Work Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the Town shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.
- 16.4 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

- 17.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.
- 17.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

- 18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.
- 18.2 In the event of any litigation arising out of this Agreement or any Work Authorization, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

- 20.1 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction, as applicable, and shall comply with all applicable TOWN Codes, county, state and federal laws, rules and regulations.
- 20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper, as applicable, under similar circumstances. If at any time during the term of any Work Authorization or the construction of a specific project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONSULTANT's documents are

incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services that failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, in equity or otherwise.

- 20.3 The CONSULTANT'S obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or Work Authorization.
- 20.4 CONSULTANT shall comply with all laws, ordinances, and governmental rules, regulations and order, now or at any time during the term of the Agreement, which are applicable to or which affect the work performed under this Agreement or any Work Authorization or any procedures of the CONSULTANT for such work.

SECTION 21. SUBCONTRACTORS

- 21.1 In the event the CONSULTANT requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONSULTANT must secure the prior written approval of the Town Manager.
- 21.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.
- 21.3 No reimbursement or payment shall be made to the CONSULTANT for any subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT and CONSULTANT is solely responsible for use of unapproved subcontractors.
- 21.4 CONSULTANT shall provide the Town Manager with evidence of insurability consistent with the minimum insurance coverage requirements in Section 16 of this Agreement for all subcontractors proposed by CONSULTANT to perform services under this Agreement or any Work Authorization. The subcontractor's insurance shall list the TOWN as an Additional Insured for General Liability and Auto Liability of the subcontractor resulting from operations performed by or on behalf of TOWN in performance of this Agreement or any Work Authorization.

SECTION 22. NOTICES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement and any Work Authorization by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement, or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 24. DISPUTE RESOLUTION

- 24.1 Any dispute concerning performance of this Agreement shall be decided by the TOWN, who shall reduce the decision to writing and serve a copy on the CONSULTANT. The decision shall be final and conclusive unless within 21 calendar days from the date of receipt, the CONSULTANT files with the TOWN a petition for an administrative hearing. The TOWN's decision on the petition shall be final, subject to the CONSULTANT's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the CONSULTANT's ability to pursue any other form of dispute resolution, including, but not limited to, litigation; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 24.2 Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Broward County, Florida.

SECTION 25. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 26. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28. CONFLICTS

- 28.1 In the event of a conflict among the components of the Contract Documents, the following order of precedence shall apply: (1) this Agreement and any written amendments, (2) the documents required to be submitted hereunder, (3) the RFQ, and (4) the CONSULTANT's Proposal.
- 28.2 Each Contract Document referenced in this Agreement is an integral part of the Agreement. Contract Documents, even if not physically attached, are incorporated by reference and should be treated as part of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

SECTION 32. STATE REQUIRED CERTIFICATIONS/AFFIDAVITS.

By entering into this Agreement, the CONSULTANT agrees to review and comply with the following state affidavit requirements:

- 32.1 **Public Entity Crimes Affidavit.** CONSULTANT shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 32.2 **Scrutinized Companies.** CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the CONSULTANT certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in

the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 32.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the TOWN requires all contractors doing business with the TOWN to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The TOWN will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 32.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 32.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

TOWN OF LAUDERDALE-BY-THE-SEA

_____ (telephone)

_____ (email)

_____ (telephone)

_____ (email)



**TOWN OF LAUDERDALE BY THE SEA
RFQ 2024-07-01**

**WALTERS ZACKRIA ASSOCIATES, PLLC
ARCHITECTURAL / ENGINEERING SERVICES**

HOURLY RATE SCHEDULE

2024 - 2025

	HOURLY
TITLE	RATE
Principal Architect	\$ 325.00
Registered Architect	\$ 250.00
Project Manager 1	\$ 220.00
Project Manager 2	\$ 185.00
Project Manager 3 / Site Inspector	\$ 155.00
Cad Operator Level 1	\$ 135.00
Administrative	\$ 120.00

Rates are effective from 10-1-24 to 12-31-25. Rates are subject to increase after the effective period. Hourly rates may be adjusted annually after the first full year of this AGREEMENT.

EXHIBIT B

SCOPE OF SERVICES

The scope of services to be provided by the Selected Firms may include, but is not limited to, the following, all of which shall be performed in accordance with applicable law:

- a) Prepare preliminary or feasibility design reports and/or design alternative recommendations. This may include preparation of conceptual designs, various types of utility modeling, surveying, field data analysis, estimates of probable construction cost and life-cycle cost analysis.
- b) Organize and attend meetings with and/or make presentations to elected officials, TOWN management, homeowner associations, business associations, and other interested stakeholder groups as requested by the TOWN. Prepare recommendations for appropriate community outreach components and processes for project development.
- c) Conduct and/or attend pre-design, design, bidding and bid award meetings for which the TOWN deems attendance is required.
- d) Prepare required bidding/construction documents for the project(s). This may include the preparation of surveys, design plans, technical specifications, cost estimates, permit applications to government agencies, and other related contract documents.
- e) Assist in evaluating bids and making bid award recommendations for construction contract(s).
- f) Provide engineering, management, administration, inspection and value engineering services for projects during construction. This may include responding to contractor's Requests for Information, shop drawing/contractor submittal review and approval, inspection and approval of project improvements or progress, certification of projects from various permitting entities, possible field revisions, and review and approval of contractor pay applications. Evaluate and make recommendations on change orders.
- g) Provide project close-out services. This may include inspection, preliminary and final acceptance of projects, preparation and approval of punch list items, providing as-built record drawings, operation and maintenance manuals, and project certification as required to all permitting agencies.
- h) Identify possible grant funding opportunities and write grant applications or portions thereof for submittal to appropriate agencies.
- i) Act as the TOWN's designated representative and engineer for various governmental engineering functions including review of development responses and issue comments related to compliance with relevant Town Codes, participation in Design Review Committee, issuance or recommendations for issuance of various Town permits, and attend meetings at the TOWN's request.

- j) Provide any other professional services to the TOWN in accordance with the CCNA, including for projects in which the estimated construction cost of each individual project under the contract does not exceed \$7.5 million; a study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for Work of a specified nature as outlined in the contract required by the TOWN, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

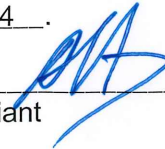
**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Town is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, I hereby affirm under penalty of perjury that:

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Town, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of Walters Zackria Associates, PLLC, a nongovernmental entity.
3. Walters Zackria Associates, PLLC does not use coercion for labor or services as defined in the relevant section of the law.

Signed on this 16th day of October, 2024.

By: 
Signature of Affiant
Abbas H. Zackria
Printed Name

OATH OR AFFIRMATION

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 16th day of October, 2024, by Abbas H. Zackria
(name of person) as President (type of authority) for
Walters Zackria Associates, PLLC (name of party on behalf of whom instrument is executed).



YARITZA D. RODRIGUEZ
Commission # HH 104054
Expires July 12, 2025
Bonded Thru Budget Notary Services


Notary Public (Print, Stamp, or Type as
Commissioned) Yaritza D. Rodriguez

- ☒ Personally known to me; or
Produced identification (Type of Identification: _____)
☒ Did take an oath; or
Did not take an oath

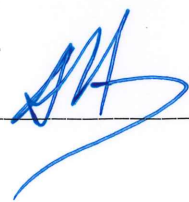
**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Town may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Town which would grant the entity access to an individual's personal identifying information.

1. Walters Zackria Associates, PLLC ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

Signed on this 16th day of October, 2024.

By: 
Signature of Affiant
Abbas H. Zackria
Printed Name

OATH OR AFFIRMATION

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 16th day of October, 2024, by Abbas H. Zackria (name of person) as President (type of authority) for Walters Zackria Associates, PLLC (name of party on behalf of whom instrument is executed).



YARITZA D. RODRIGUEZ
Commission # HH 104054
Expires July 12, 2025
Bonded Thru Budget Notary Services


Notary Public (Print, Stamp, or Type as
Commissioned) Yaritza D. Rodriguez

- ☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☒ Did take an oath; or
☐ Did not take an oath



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/16/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Collinsworth Ins&Risk Mgmt Services Inc P.O. Box 661628 Miami Springs FL 33266	CONTACT NAME: Erinn E Collinsworth PHONE (A/C, No, Ext): (786) 930-4795 E-MAIL ADDRESS: erinn@collinsworthinsurance.com FAX (A/C, No): (786) 930-4794														
INSURED Walters Zackria Associates, PLLC 5813 N. Andrews Way Fort Lauderdale FL 33309 (954) 522-4123	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Travelers Property Casualty of</td><td>25674</td></tr><tr><td>INSURER B: The Phoenix Insurance Company</td><td>25623</td></tr><tr><td>INSURER C: Liberty Insurance Underwriters</td><td>19917</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Property Casualty of	25674	INSURER B: The Phoenix Insurance Company	25623	INSURER C: Liberty Insurance Underwriters	19917	INSURER D:		INSURER E:		INSURER F:	
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INSURER B: The Phoenix Insurance Company	25623														
INSURER C: Liberty Insurance Underwriters	19917														
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **ZG** **CERTIFICATE NUMBER: Cert ID 18381 (67)** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y		680-0L247148	06/16/2024	06/16/2025	<table><tr><td>EACH OCCURRENCE</td><td>\$ 2,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 1,000,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 5,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 2,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 4,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$ 4,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 2,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 5,000	PERSONAL & ADV INJURY	\$ 2,000,000	GENERAL AGGREGATE	\$ 4,000,000	PRODUCTS - COMP/OP AGG	\$ 4,000,000		\$
EACH OCCURRENCE	\$ 2,000,000																				
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GENERAL AGGREGATE	\$ 4,000,000																				
PRODUCTS - COMP/OP AGG	\$ 4,000,000																				
	\$																				
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			680-0L247148	06/16/2024	06/16/2025	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
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PROPERTY DAMAGE (Per accident)	\$																				
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EACH OCCURRENCE	\$																				
AGGREGATE	\$																				
	\$																				
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ Y	N/A	UB-0L179485	06/16/2024	06/16/2025	<table><tr><td>☒ PER STATUTE ☐ OTH-ER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	☒ PER STATUTE ☐ OTH-ER		E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
☒ PER STATUTE ☐ OTH-ER																					
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E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																				
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				
C	Professional Liability			AEXNYACAH81004 Claims Made Basis	06/16/2024	06/16/2025	<table><tr><td>Each Claim</td><td>\$ 2,000,000</td></tr><tr><td>Policy Aggregate</td><td>\$ 2,000,000</td></tr></table>	Each Claim	\$ 2,000,000	Policy Aggregate	\$ 2,000,000										
Each Claim	\$ 2,000,000																				
Policy Aggregate	\$ 2,000,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

When required by written contract: Certificate Holder is named as additional insured, excluding professional services, on the General Liability. Issuing companies will provide 30 days written notice of cancellation; 10 days for nonpayment of premium.

CERTIFICATE HOLDER

CANCELLATION

Town of Lauderdale-By-The-Sea, Florida 4501 Ocean Drive Lauderdale By The Se FL 33308	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HITCHCOCK DESIGN GROUP INC. PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-01 FOR CONTINUING PROFESSIONAL LANDSCAPE ARCHITECTURE SERVICES; PROVIDING FOR AUTHORIZATION, IMPLEMENTATION, AND AN EFFECTIVE DATE.

WHEREAS, on July 24, 2024, the Town of Lauderdale-By-The-Sea (the “Town”) issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects, in accordance with Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (CCNA) (the “Services”); and

WHEREAS, fifteen sealed responses were received by the RFQ deadline, and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39, which approved the rankings of respondents to the RFQ and authorized the Town Manager to negotiate a continuing professional services agreement with the top seven ranked qualified firms, including Hitchcock Design Group Inc. (the “Consultant”) for professional landscape architecture services (the “Services”); and

WHEREAS, the Town Manager has negotiated the agreement attached hereto as Exhibit “1” (the “Agreement”) with the Consultant for the Services and the Town Commission wishes to approve the Agreement; and

WHEREAS, the Town Commission finds that it is in the best interests of the Town to proceed as indicated in this Resolution and approve the Agreement with the Consultant for the Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

Section 1. Recitals. Each “WHEREAS” clause set forth is true and correct and herein incorporated by this reference.

Section 2. Approval. The Town Commission hereby approves the Agreement with the Consultant for the Services.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with the Consultant, in substantially the form attached hereto as Exhibit 1, subject to the final approval of the Town Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of November 2024.

Mayor Edmund Malkoon

Attest:

Katrina Adler, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT 1

CONTINUING PROFESSIONAL SERVICES AGREEMENT BETWEEN TOWN OF LAUDERDALE-BY-THE-SEA AND HITCHCOCK DESIGN GROUP INC.

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation (the “TOWN”) and Hitchcock Design Group Inc., a [State] profit corporation authorized to do business in Florida (the “CONSULTANT”).

WHEREAS, pursuant to Section 287.055, Florida Statutes, known as the Consultants’ Competitive Negotiation Act (“CCNA”), on July 24, 2024, the TOWN issued Request for Qualifications No. 2024-07-01 (the “RFQ”) for professional architectural, landscape architectural, engineering, traffic engineering, and survey and mapping services, as may be needed from time to time for Town projects; and

WHEREAS, in response to the RFQ, the Consultant submitted its qualifications (the “Qualifications,” which are incorporated herein by reference) for professional landscape architecture services (the “Services,” as herein defined); and

WHEREAS, on September 18, 2024, the Town Commission adopted Resolution No. 2024-39 selecting the CONSULTANT as one of the top-ranked firms to perform the Services and authorized the Town Manager to negotiate and execute a contract with the CONSULTANT; and

WHEREAS, the TOWN and CONSULTANT, through mutual negotiation, have agreed upon a rate schedule as set forth in **Exhibit A** (the “Rate Schedule”) in connection with the Services; and

WHEREAS, the CONSULTANT will perform the Services for the TOWN, as further described in **Exhibit B** attached hereto, on an as-requested, per-project basis; and

WHEREAS, the TOWN desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Additional definitions provided for in the RFQ are also incorporated herein.

- 2.1 **Contract Documents** refers to this Agreement, the Request for Qualifications No. 24-07-01 RFQ), incorporated herein by reference, CONSULTANT's response to the RFQ, incorporated herein by reference, all specifications, Certificate(s) of Insurance, Work Authorizations and all written amendments issued on or after the effective date of this Agreement.
- 2.2 **Compensation** means the total amount paid by the TOWN for the CONSULTANT's professional services pursuant to an executed Work Authorization, exclusive of Reimbursable Expenses.
- 2.3 **Reimbursable Expenses** means the expenses directly attributable to the Work Authorization that are not Compensation in the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONSULTANT. Reimbursable Expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified the Work Authorization; travel expenses as provided in Paragraph 3.4 of this Agreement. Travel Expenses are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager.
- 2.4 **Subcontractor Fee** means the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.
- 2.5 **Work Authorization** means the document issued by TOWN to a CONSULTANT authorizing a specific scope of services, the Compensation to be paid, the time frame to complete the work and other project specific details.

SECTION 3. WORK AUTHORIZATIONS; SCOPE OF SERVICES; COMPENSATION

- 3.1 In accordance with the CCNA, the CONSULTANT shall provide professional services to the TOWN for projects that are specified in Work Authorizations that may be approved from time to time by either the Town Commission or Town Manager as authorized by this Section 3. The TOWN reserves the right to select one or more firms to perform any specific project.
- 3.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONSULTANT for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide such professional services. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 3.3 (a) through (g). The Town Manager or designated representative and CONSULTANT shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 3. Each Work Authorization shall incorporate this Agreement by reference.

- 3.3 The TOWN and CONSULTANT shall utilize a supplemental agreement referred to as a Work Authorization which will, by mutual agreement, set forth, among other things, the following:
- a. The Scope of Services;
 - b. The tasks to be performed, including any deliverables;
 - c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
 - d. The amount and type of Compensation requested and the proposed payment schedule;
 - e. The CONSULTANT's Project Manager and any subcontractors assigned to the Work Authorization;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
 - g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.
- 3.4 Upon the completion of each task assigned to CONSULTANT, CONSULTANT shall provide the applicable records to TOWN. All documents including, but not limited to, electronic files, drawings and specifications prepared in connection with the project.
- 3.5 CONSULTANT acknowledges that TOWN and CONSULTANT shall establish mutually agreeable performance standards to evaluate CONSULTANT's performance based upon responsiveness, quality of work, turn around time for the completion of required work and other standards agreed to by the parties. CONSULTANT and TOWN'S Director of Development Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.6 The TOWN agrees to compensate CONSULTANT for services rendered on an hourly basis in accordance with the rates shown in **Exhibit A**. The hourly rates set forth in **Exhibit A** shall be subject to an annual increase based on the Consumer Price Index (CPI) or 5%, whichever is lower.
- 3.7 Each Work Authorization shall specify whether compensation will be on an hourly basis or lump sum, with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.
- 3.8 Travel Expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, are not a reimbursed expense unless CONSULTANT has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.
- 3.9 CONSULTANT will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and the percentage of the Work Authorization completed. Within 10 days after receipt of the invoice, the Town shall notify

CONSULTANT, in writing, of any discrepancies or disputed items on the invoice and indicate what corrective action on the part of the CONSULTANT is needed to make the invoice proper. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONSULTANT. The TOWN shall pay the CONSULTANT the undisputed portion of the invoice within thirty (30) days of receipt of the invoice.

- 3.10 If a dispute arises concerning payment of an invoice, the Town Manager or designee shall commence proceedings to resolve the dispute within thirty (30) days after receipt of the invoice. The Town Manager shall make a final determination regarding any disputed portion of the invoice within forty-five (45) days of receipt of the invoice during which time the Town Manager or designee shall meet with the CONSULTANT to seek resolution of the disputed invoice.
- 3.11 The professional services to be rendered by the CONSULTANT shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONSULTANT prior to execution of a Work Authorization shall be at CONSULTANT's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.
- 3.12 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONSULTANT'S services do not exceed \$25,000.00. Any services exceeding \$25,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.
- 3.13 In the event that a Work Authorization for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONSULTANT, at no additional cost to the TOWN, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

SECTION 4. TERM/TERMINATION

- 4.1 **Term of Agreement.** This Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for a period of five years, unless terminated earlier pursuant to this Agreement. At the TOWN's option, this Agreement may be renewed for two successive two-year renewal terms under the same terms and conditions if mutually agreeable to the parties.
- 4.2 **Termination For Convenience.** The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, upon thirty (30) calendar days' written notice to CONSULTANT. If any such termination notice is provided by the TOWN, the CONSULTANT shall immediately cease work on any Work Authorizations

issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT for work completed pursuant to this Agreement to the satisfaction of the TOWN, its reasonable documented costs actually incurred as of the date of the termination notice. Under no circumstances shall the TOWN make payment of profit for services that have not been performed.

- 4.3 **Termination For Cause.** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify and hold the TOWN harmless against any loss pertaining to such termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 4.2 and the provisions of Section 4.2 shall apply.
- 4.4 **Non-Exclusive Agreement.** Notwithstanding the provisions of this Agreement, the Town Manager may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.
- 4.5 **Town Right to Extend.** At the sole discretion of the Town Manager, this Agreement may be extended for a period of up to one hundred fifty (150) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the Town Manager to be in the best interest of the Town. Extensions beyond one hundred fifty (150) days must be approved by the Town Commission.

SECTION 5. CHANGES TO WORK AUTHORIZATIONS

- 5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Authorization consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by a Work Authorization Amendment without invalidating the Work Authorization. Such changes must be contained in a written Work Authorization Amendment executed by the parties in accordance with the provisions of this Agreement, prior to any deviation from the terms of the Work Authorization, including the initiation of any extra work. The Compensation and/or the Completion time may be changed only by Work Authorization Amendment.
- 5.2 **Work Authorization Amendment Defined.** A Work Authorization Amendment shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. A

Work Authorization shall only be modified by an executed Work Authorization Amendment or the issuance of a new Work Authorization.

- 5.3 **Effect of Executed Work Authorization Amendment.** The execution of a Work Authorization Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT and the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Compensation or the completion time, or any combination thereof. The CONSULTANT, by executing the Work Authorization Amendment, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Authorization Amendment. The CONSULTANT agrees that no claim for delay damages shall be asserted against the TOWN and hereby waives the right to assert any such claim.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

- 7.1 TOWN shall assist CONSULTANT by providing CONSULTANT with available information that is pertinent to the Work Authorization as may be requested in writing by the CONSULTANT and allow reasonable access to pertinent information relating to the services to be performed by CONSULTANT.
- 7.2 TOWN shall provide CONSULTANT access to TOWN property as required for CONSULTANT to perform services under this Agreement or any Work Authorization.

SECTION 8. PROFESSIONAL CONDUCT; CONFLICT OF INTEREST

- 8.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.
- 8.2 CONSULTANT warrants and represents that it shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and Broward County Code of Ethics (County Code Section 1-19), as they may be amended from time to time.

- 8.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 8.4 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.
- 8.5 During the term of this Agreement, CONSULTANT agrees not to accept representation of another client that is regulated by or requires development approval from the TOWN or has interests that are directly adverse to TOWN'S interest.
- 8.6 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

- 9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or services provided under this Agreement or any Work Authorization and shall not engage in or commit any discriminatory practice against any person based on race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery in the performance of work under this Agreement or a Work Authorization.
- 9.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

- 10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to this Agreement and any Work Authorization shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within 10 calendar days after written notice requesting delivery of such documents. In no event shall the CONSULTANT use, or permit to be used, any of the documents, without the TOWN'S prior written authorization.
- 10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for a Work Authorization

shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

- 10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.
- 10.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 11. RECORDS/AUDITS

- 11.1 CONSULTANT shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Work Authorization and any work performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Work Authorization or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.
- 11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:
 - a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TOWN.
 - b. Upon request from the TOWN's custodian of public records, CONSULTANT shall provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the TOWN.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the Town Manager, at no cost to the TOWN, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the Town in a format that is compatible with the TOWN's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-640-4200, TOWNCLERK@LAUDERDALEBYTHESEA-FL.GOV, OR BY MAIL: TOWN CLERK, 4501 N. OCEAN DRIVE, LAUDERDALE-BY-THE-SEA, FL 33308.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 12. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement and any Work Authorizations. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

- 14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld in the TOWN's sole discretion.
- 14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

- 15.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, or costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Authorization.
- 15.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement and each Work Authorization for the above hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15.
- 15.3 Nothing in this Agreement shall be deemed or treated as a waiver by the TOWN of any immunity to which it is entitled by law, including but not limited to the TOWN's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section 15 shall survive termination of this Agreement.

SECTION 16. INSURANCE

- 16.1 The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The insurance coverage shall be primary insurance with respect to the

CONSULTANT, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The following minimum insurance coverage requirements shall apply on a per project basis:

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the CONSULTANT shall be allowed to provide services pursuant to this RFQ who is not covered by Worker's Compensation insurance.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONSULTANT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non-Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.
- c. **Comprehensive General Liability:** This insurance shall be written on a "per occurrence" basis only in comprehensive form and shall protect the TOWN and the CONSULTANT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence combined single limit, or \$1,000,000 per occurrence/\$2,000,000 general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage. Defense Costs must be 'outside the limits' of liability.
- d. **Professional Liability:** \$1,000,000 per incident. If coverage is written on a claims-made form, the retroactive date of coverage shall be no later than the inception date of the claims made coverage, unless the prior act policy was extended indefinitely to cover prior period acts. Provisions shall be made to provide coverage beyond the policy year, when necessary. Defense Costs must be 'outside the limits' of liability.

At the Town's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

- e. **Certificate of Insurance:** Concurrent with the execution of this Agreement and prior to the execution of a Work Authorization, the CONSULTANT shall provide the TOWN an original Certificate of Insurance documenting compliance with each required insurance policy. The TOWN is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONSULTANT resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- **Completed Operations** & CG 20 10 04 13 Additional Insured-owners, lessees or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the Town Manager, in the Town Manager's sole discretion.

CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- 16.2 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.
- 16.3 Insurance carriers providing the insurance required by this Agreement or any Work Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the Town shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.
- 16.4 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

- 17.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.
- 17.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

- 18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.
- 18.2 In the event of any litigation arising out of this Agreement or any Work Authorization, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

- 20.1 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction, as applicable, and shall comply with all applicable TOWN Codes, county, state and federal laws, rules and regulations.
- 20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper, as applicable, under similar circumstances. If at any time during the term of any Work Authorization or the construction of a specific project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONSULTANT's documents are

incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services that failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, in equity or otherwise.

- 20.3 The CONSULTANT'S obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or Work Authorization.
- 20.4 CONSULTANT shall comply with all laws, ordinances, and governmental rules, regulations and order, now or at any time during the term of the Agreement, which are applicable to or which affect the work performed under this Agreement or any Work Authorization or any procedures of the CONSULTANT for such work.

SECTION 21. SUBCONTRACTORS

- 21.1 In the event the CONSULTANT requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONSULTANT must secure the prior written approval of the Town Manager.
- 21.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.
- 21.3 No reimbursement or payment shall be made to the CONSULTANT for any subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT and CONSULTANT is solely responsible for use of unapproved subcontractors.
- 21.4 CONSULTANT shall provide the Town Manager with evidence of insurability consistent with the minimum insurance coverage requirements in Section 16 of this Agreement for all subcontractors proposed by CONSULTANT to perform services under this Agreement or any Work Authorization. The subcontractor's insurance shall list the TOWN as an Additional Insured for General Liability and Auto Liability of the subcontractor resulting from operations performed by or on behalf of TOWN in performance of this Agreement or any Work Authorization.

SECTION 22. NOTICES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement and any Work Authorization by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement, or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 24. DISPUTE RESOLUTION

- 24.1 Any dispute concerning performance of this Agreement shall be decided by the TOWN, who shall reduce the decision to writing and serve a copy on the CONSULTANT. The decision shall be final and conclusive unless within 21 calendar days from the date of receipt, the CONSULTANT files with the TOWN a petition for an administrative hearing. The TOWN's decision on the petition shall be final, subject to the CONSULTANT's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the CONSULTANT's ability to pursue any other form of dispute resolution, including, but not limited to, litigation; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 24.2 Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Broward County, Florida.

SECTION 25. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 26. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28. CONFLICTS

- 28.1 In the event of a conflict among the components of the Contract Documents, the following order of precedence shall apply: (1) this Agreement and any written amendments, (2) the documents required to be submitted hereunder, (3) the RFQ, and (4) the CONSULTANT's Proposal.
- 28.2 Each Contract Document referenced in this Agreement is an integral part of the Agreement. Contract Documents, even if not physically attached, are incorporated by reference and should be treated as part of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

SECTION 32. STATE REQUIRED CERTIFICATIONS/AFFIDAVITS.

By entering into this Agreement, the CONSULTANT agrees to review and comply with the following state affidavit requirements:

- 32.1 **Public Entity Crimes Affidavit.** CONSULTANT shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 32.2 **Scrutinized Companies.** CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the CONSULTANT certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in

the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the TOWN may immediately terminate this Agreement at its sole option if the CONSULTANT is found to have submitted a false certification; or if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 32.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the TOWN requires all contractors doing business with the TOWN to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The TOWN will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 32.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 32.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the CONSULTANT acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

TOWN OF LAUDERDALE-BY-THE-SEA

_____ (telephone)

_____ (email)

_____ (telephone)

_____ (email)



EXHIBIT A RATES

Standard Billing Rates and Expenses

BILLING RATES

Senior Principal	\$260
Principal	\$230
Senior Associate	\$190
Associate	\$150
Junior Associate	\$130

Reimbursable Expenses

In addition to our standard hourly rates, we invoice qualified sub-consultant fees, travel, and reproduction expenses per the terms of our agreement with mileage invoiced at the current IRS reimbursement rate.

EXHIBIT B

SCOPE OF SERVICES

The scope of services to be provided by the Selected Firms may include, but is not limited to, the following, all of which shall be performed in accordance with applicable law:

- a) Prepare preliminary or feasibility design reports and/or design alternative recommendations. This may include preparation of conceptual designs, various types of utility modeling, surveying, field data analysis, estimates of probable construction cost and life-cycle cost analysis.
- b) Organize and attend meetings with and/or make presentations to elected officials, TOWN management, homeowner associations, business associations, and other interested stakeholder groups as requested by the TOWN. Prepare recommendations for appropriate community outreach components and processes for project development.
- c) Conduct and/or attend pre-design, design, bidding and bid award meetings for which the TOWN deems attendance is required.
- d) Prepare required bidding/construction documents for the project(s). This may include the preparation of surveys, design plans, technical specifications, cost estimates, permit applications to government agencies, and other related contract documents.
- e) Assist in evaluating bids and making bid award recommendations for construction contract(s).
- f) Provide engineering, management, administration, inspection and value engineering services for projects during construction. This may include responding to contractor's Requests for Information, shop drawing/contractor submittal review and approval, inspection and approval of project improvements or progress, certification of projects from various permitting entities, possible field revisions, and review and approval of contractor pay applications. Evaluate and make recommendations on change orders.
- g) Provide project close-out services. This may include inspection, preliminary and final acceptance of projects, preparation and approval of punch list items, providing as-built record drawings, operation and maintenance manuals, and project certification as required to all permitting agencies.
- h) Identify possible grant funding opportunities and write grant applications or portions thereof for submittal to appropriate agencies.
- i) Act as the TOWN's designated representative and engineer for various governmental engineering functions including review of development responses and issue comments related to compliance with relevant Town Codes, participation in Design Review Committee, issuance or recommendations for issuance of various Town permits, and attend meetings at the TOWN's request.

- j) Provide any other professional services to the TOWN in accordance with the CCNA, including for projects in which the estimated construction cost of each individual project under the contract does not exceed \$7.5 million; a study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for Work of a specified nature as outlined in the contract required by the TOWN, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

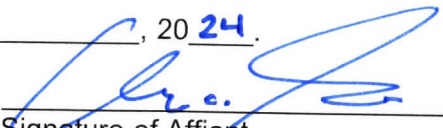
**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with the Town is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, I hereby affirm under penalty of perjury that:

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and the Town, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of HITCHCOCK DESIGN GROUP, a nongovernmental entity.
3. HITCHCOCK DESIGN GROUP does not use coercion for labor or services as defined in the relevant section of the law.

Signed on this 22nd day of OCTOBER, 20 24.

By: 

Signature of Affiant

ALEXANDER C. FENECH

Printed Name

OATH OR AFFIRMATION

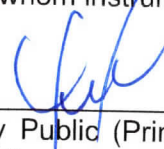
State of Florida

County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 22 day of October, 20 24, by Alexander Fenech (name of person) as Principal (type of authority) for HITCHCOCK DESIGN GROUP (name of party on behalf of whom instrument is executed).



YUDERQUIS COELLO
Commission # HH 210413
Expires December 21, 2025



Notary Public (Print, Stamp, or Type as Commissioned)

☒ Personally known to me; or

☐ Produced identification (Type of Identification: F520003863500)

☐ Did take an oath; or

☐ Did not take an oath



YUDERQUIS COELLO
Commission # HH 210413
Expires December 21, 2025

**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), the Town may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with the Town which would grant the entity access to an individual's personal identifying information.

1. HITCHCOCK DESIGN GROUP ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

Signed on this 22ND day of OCTOBER, 2024.

By: _____

Signature of Affiant

ALEXANDER C. FENECH

Printed Name

OATH OR AFFIRMATION

State of Florida

County of Broward

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 22 day of October, 2024, by Alexander Fenech (name of person) as Principal (type of authority) for Hitchcock Design Group (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

Personally known to me; or

☒ Produced identification (Type of Identification: F520003863500)

Did take an oath; or

Did not take an oath



YUDERQUIS COELLO

Commission # HH 210413

Expires December 21, 2025



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
WTW MIDWEST INC	PHONE (A/C, No, Ext): (888) 780-5381	
233 S WACKER DR, SUITE 2000	FAX (A/C, No): (866) 828-2424	
CHICAGO IL 60606	E-MAIL ADDRESS: Certificate@Hanover.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Massachusetts Bay Ins Co	22306
	INSURER B: Hanover Insurance Co	22292
	INSURER C: Hanover American Ins Co	36064
	INSURER D:	
	INSURER E:	
	INSURER F:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
HITCHCOCK DESIGN GROUP INC		
HITCHCOCK DESIGN GROUP		
22 E CHICAGO AVE STE 200 STE 200A		
NAPERVILLE IL 60540		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y	N	ODC D850562 05	03/10/2024	03/10/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	N	N	ODC D850562 05	03/10/2024	03/10/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$	Y	N	ODC D850562 05	03/10/2024	03/10/2025	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N	N / A N	WZC D850531 05	03/10/2024	03/10/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Architects & Engineers Prof Liab	N	N	LHC J336014 01	03/10/2024	03/10/2025	Claims-Made: \$3M Ea Claim/\$4M Agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is an Additional Insured on the General Liability pursuant to the terms and conditions by form 391-1586. Cancellation Notice will be provided to the Certificate Holder pursuant to endorsement: 401-1235. Such notice is solely for the purpose of informing the Certificate Holder of the effective date of cancellation and does not grant, alter, or extend any rights or obligations under this policy.

CERTIFICATE HOLDER**CANCELLATION**

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA 4501 OCEAN DRIVE LAUDERDALE-BY-THE-SEA FL 33308	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

A. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured:**

Additional Insured by Contract, Agreement or Permit

a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit including "bodily injury" or "property damage" included in the "products-completed operations hazard" only if this Coverage Part provides such coverage.
- (2) Premises you own, rent, lease or occupy; or
- (3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.
- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

c. This provision does not apply:

- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal

injury and advertising injury".

(2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.

(3) To any lessor of equipment:

- (a) After the equipment lease expires; or
- (b) If the "bodily injury", "property damage", or "personal and advertising injury" arises out of sole negligence of the lessor

(4) To any:

- (a) Owners or other interests from whom land has been leased if the "occurrence" or offense takes place or the offense is committed after the lease for the land expires; or
- (b) Managers or lessors of premises if:
 - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

(5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

B. Aggregate Limits of Insurance per Project or per Location

The following changes are made to **SECTION II - LIABILITY**:

1. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance**, paragraph 4:
The Aggregate Limits of Insurance apply separately to each of "your projects" or each "location" listed in the Declarations.
2. For the purpose of coverage provided by this endorsement only, the following is

added to **SECTION II - LIABILITY, F. Liability And Medical Expenses Definitions**:

1. "Your project" means:
 - a. Any premises, site or "location" at, on, or in which "your work" is not yet completed; and
 - b. Does not include any "location" listed in the Declarations.
2. "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO DESIGNATED ENTITY(S)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 HANOVER COMMERCIAL FOLLOW FORM EXCESS AND UMBRELLA POLICY
 COMMERCIAL PROPERTY COVERAGE PART
 BUSINESS AUTO COVERAGE FORM
 BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Name of Designated Entity	Mailing Address or Email Address	Number Days Notice
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA	4501 OCEAN DRIVE, LAUDERDALE-BY-THE-SEA FL 33308	30

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

If we cancel this policy for any reason other than nonpayment of premium, we will give written notice of such cancellation to the Designated Entity(s) shown in the Schedule. Such notice may be delivered or sent by any means of our choosing. The notice to the Designated Entity(s) will state the effective date of cancellation.

Unless otherwise noted in the Schedule above, such notice will be provided to the Designated Entity(s) no more than the number of days in advance of the effective date of cancellation that we are required to provide to the Named Insured for such cancellation.

Such notice of cancellation is solely for the purpose of informing the Designated Entity(s) of the effective date of cancellation and does not grant, alter, or extend any rights or obligations under this policy.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.