



VILLAGE OF NORTH PALM BEACH REGULAR SESSION AGENDA - **REVISED**

VILLAGE HALL COUNCIL CHAMBERS
501 U.S. HIGHWAY 1

THURSDAY, OCTOBER 12, 2023
7:00 PM

David B. Norris
Mayor

Susan Bickel
Vice Mayor

Darryl C. Aubrey
President Pro Tem

Mark Mullinix
Councilmember

Deborah Searcy
Councilmember

Chuck Huff
Village Manager

Leonard G. Rubin
Village Attorney

Jessica Green
Village Clerk

INSTRUCTIONS FOR "WATCH LIVE" MEETING

To watch the meeting live please go to our website page (link provided below) and click the "Watch Live" link provided on the webpage:

<https://www.village-npb.org/CivicAlerts.aspx?AID=496>

ROLL CALL

INVOCATION - MAYOR

PLEDGE OF ALLEGIANCE - VICE MAYOR

ADDITIONS, DELETIONS, AND MODIFICATIONS TO THE AGENDA

AWARDS AND RECOGNITION

APPROVAL OF MINUTES

1. Minutes of the Regular Session held September 28, 2023

COUNCIL BUSINESS MATTERS

STATEMENTS FROM THE PUBLIC, PETITIONS AND COMMUNICATIONS

Members of the public may address the Council concerning items on the Consent Agenda or any non agenda item under Statements from the Public. **Time Limit: 3 minutes**

Members of the public who wish to speak on any item listed on the Regular Session or Workshop Session Agenda will be called on when the issue comes up for discussion. **Time Limit: 3 minutes**

Anyone wishing to speak should complete a Public Comment Card (on the table at back of Council Chambers) and submit it to the Village Clerk prior to the beginning of the meeting.

CONSENT AGENDA

The Consent Agenda is for the purpose of expediting issues of a routine or pro-forma nature. Councilmembers may remove any item from the Consent Agenda, which would automatically convey that item to the Regular Agenda for separate discussion and vote.

2. **MOTION** – Approving the suspension of the 11/23/23 and 12/28/23 Council meetings in observance of national holidays.
3. **RESOLUTION** – Authorizing the Village Manager and the Village Clerk to execute all documents required to effectuate transactions involving Village vehicles.
4. **RESOLUTION** – Amending the Comprehensive Pay Plan adopted as part of the Fiscal Year 2024 Budget to revise the pay grade for the position of Building Official.
5. Receive for file Minutes of the Residential Ad-Hoc Committee meeting held 7/25/22.
6. Receive for file Minutes of the Residential Ad-Hoc Committee meeting held 8/23/22.
7. Receive for file Minutes of the Business Advisory Board meeting held 7/18/23.
8. Receive for file Minutes of the Waterways Advisory Board meeting held 7/25/23.
9. Receive for file Minutes of the Planning Commission meeting held 8/1/23.
10. Receive for file Minutes of the Recreation Advisory Board meeting held 8/08/23.
11. Receive for file Minutes of the Business Advisory Board meeting held 8/15/23.
12. Receive for file Minutes of the Library Advisory Board meeting held 8/22/23.

DECLARATION OF EX PARTE COMMUNICATIONS

PUBLIC HEARINGS AND QUASI-JUDICIAL MATTERS

13. **PUBLIC HEARING AND 2ND READING OF ORDINANCE 2023-17 - CODE AMENDMENT - R1 SINGLE FAMILY DWELLING DISTRICT - REMOVING REGULATIONS RELATING TO VOLUME AND MASSING OF TWO-STORY SINGLE FAMILY DWELLINGS AND ADDING A GUIDANCE STATEMENT**
Consider a motion to adopt and enact on second reading Ordinance 2023-17 amending Appendix C (Chapter 45), "Zoning," of the Village Code of Ordinances to recognize the state preemption of portions of Ordinance No. 2022-18; Amending Article III, "District Regulations," by amending Section 45-27, "R-1 Single-Family Dwelling District," to remove regulations relating to the volume and massing of two-story single-family dwellings and to add a guidance statement.
14. **PUBLIC HEARING AND 2ND READING OF ORDINANCE 2023-18 - CODE AMENDMENT - CREATE PLANNING, ZONING AND ADJUSTMENT BOARD** Consider a motion to adopt and enact on second reading Ordinance 2023-18 amending Chapter 21, "Planning and Development," of the Village Code of Ordinances by Amending Article II, "Planning Commission," to create a Planning, Zoning and Adjustment Board and repealing Article III, "Board of Adjustment," in its entirety; amending Article VI, "Rezoning, Variances and Waivers," of Chapter 45 (Appendix C), "Zoning," of the Village Code of Ordinances by Amending Section 45-50, "Variances," to provide procedures for variances and adopting a new Section 45-52, "Administrative Appeals;" replacing all Village Code references to the Planning Commission with the Planning, Zoning and Adjustment Board.
15. **PUBLIC HEARING AND 2ND READING OF ORDINANCE 2023-19 - CHANGING THE DATE OF THE MARCH 2024 GENERAL ELECTION AND PROVIDE FOR AN ADDITIONAL QUALIFYING PERIOD**
Consider a motion to adopt on and enact on second reading Ordinance 2023-19 changing the date of the March 2024 General Election to coincide with the Statewide Presidential Preference Primary; establishing the dates for qualification of candidates; providing for commencement and length of term of office; providing for an additional qualifying period for vacancies arising after initial qualifying period; providing for transmittal to the Supervisor of Elections.

OTHER VILLAGE BUSINESS MATTERS

- 16. RESOLUTION – MINOR PUD AMENDMENT** Consider a motion to adopt a resolution approving a minor amendment to the Memory Care Commercial Planned Unit Development for the installation of a pass-through window consisting of a three-panel glass pane garage door on the north side of the commercial outparcel building.
- 17. RESOLUTION – COUNTRY CLUB TENNIS CENTER FENCING CONTRACT** Consider a motion to adopt a resolution accepting a Proposal from Daniels Fence Corp. for the removal, disposal and replacement of fencing at the North Palm Beach Country Club Tennis Center at a total cost not to exceed \$235,890; and authorizing execution of the Contract.
- 18. RESOLUTION – GOLF CART PATH CONCRETE WORK CONTRACT** Consider a motion to adopt a resolution approving a Contract with Drive Cart Path Systems, LLC for concrete cart path curbing, extension, and panel replacement at the North Palm Beach Country Club Golf Course at a cost not to exceed \$50,000; and authorizing execution of the Contract.

COUNCIL AND ADMINISTRATION MATTERS

MAYOR AND COUNCIL MATTERS/REPORTS

VILLAGE MANAGER MATTERS/REPORTS

REPORTS (SPECIAL COMMITTEES AND ADVISORY BOARDS)

ADJOURNMENT

If a person decides to appeal any decision by the Village Council with respect to any matter considered at the Village Council meeting, he will need a record of the proceedings, and for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

In accordance with the Americans with Disabilities Act, any person who may require special accommodation to participate in this meeting should contact the Village Clerk's office at 841-3355 at least 72 hours prior to the meeting date.

This agenda represents the tentative agenda for the scheduled meeting of the Village Council. Due to the nature of governmental duties and responsibilities, the Village Council reserves the right to make additions to, or deletions from, the items contained in this agenda.



DRAFT MINUTES OF THE REGULAR SESSION
VILLAGE COUNCIL OF NORTH PALM BEACH, FLORIDA
SEPTEMBER 28, 2023

Present:

Susan Bickel, Vice Mayor
Darryl C. Aubrey, Sc.D., President Pro Tem
Deborah Searcy, Councilmember
Mark Mullinix, Councilmember
Chuck Huff, Village Manager
Len Rubin, Village Attorney
Jessica Green, Village Clerk

Absent:

David B. Norris, Mayor

ROLL CALL

Vice Mayor Bickel called the meeting to order at 7:00 p.m. All members of Council were present except Mayor Norris who was out of town. All members of staff were present.

INVOCATION AND PLEDGE OF ALLEGIANCE

Vice Mayor Bickel gave the invocation and President Pro Tem Aubrey led the public in the Pledge.

AWARDS AND RECOGNITION

Vice Mayor Bickel presented a proclamation for Palm Beach State College's 90th Anniversary to Susan Del Portal, Manager of External Affairs and Stephen Joyner, Provost at Palm Beach State College.

Ms. Del Portal and Mr. Joyner thanked Council for the proclamation.

STATEMENTS FROM THE PUBLIC

John Samadi, 512 Marlin Road, gave suggestions for the types of articles or information that should be included in the Village newsletter.

PUBLIC HEARINGS AND QUASI-JUDICIAL MATTERS

PUBLIC HEARING AND SECOND READING OF AD VALOREM TAX MILLAGE RATE ORDINANCE AND BUDGET ORDINANCE

A motion was made by President Pro Tem Aubrey and seconded by Councilmember Searcy to adopt and enact on second reading Ordinance 2023-15 entitled:

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, ESTABLISHING AND ADOPTING THE FINAL LEVY OF AD VALOREM TAXES FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was made by Councilmember Mullinix and seconded by President Pro Tem Aubrey to adopt and enact on second reading Ordinance 2023-16 entitled:

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, ADOPTING THE ANNUAL BUDGET OF THE VILLAGE OF NORTH PALM BEACH FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024 AND AUTHORIZING ALLOCATIONS, APPROPRIATIONS AND EXPENDITURES IN ACCORDANCE WITH THE BUDGET AND AS AUTHORIZED BY LAW; APPROVING A COMPREHENSIVE PAY PLAN AND AUTHORIZING THE VILLAGE MANAGER TO MAKE TEMPORARY APPOINTMENTS TO BUDGETED POSITIONS; APPROVING A MASTER FEE SCHEDULE; PROVIDING FOR THE CREATION OF GOVERNMENTAL FUNDS WHEN NECESSARY; PROVIDING FOR THE RECEIPT OF GRANTS OR GIFTS; PROVIDING PROCEDURES FOR BUDGET AMENDMENTS; PROVIDING FOR THE LAPSE OF OUTSTANDING ENCUMBRANCES AND THE RE-APPROPRIATION OF UNEXPENDED APPROPRIATIONS FOR THE PRIOR FISCAL YEAR; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Huff stated that he did not have a presentation, but instead thanked all of the Department Heads for their work and participation in putting the budget together and thanked Council for their direction and guidance. The ad valorem tax millage rate and FY 2023-2024 budget ordinances both passed on first reading at the prior Council meeting. The millage rate was lowered from 7.0000 mils to 6.9000 mils.

Vice Mayor Bickel opened the public hearing on the ad valorem tax millage rate and budget.

There being no comments from the public, Vice Mayor Bickel closed the public hearing.

Councilmember Mullinix expressed his concerns with the budget and recommended lowering the budget and millage rate for the next budget year cycle.

President Pro Tem Aubrey stated that he regrets that there was an increase that would cost residents a little more, but due to inflation, everything has gone up in price. It was also imperative to maintain competitive pay rates in order to keep the Village maintained and properly staffed.

PUBLIC HEARING AND SECOND READING OF AD VALOREM TAX MILLAGE RATE ORDINANCE AND BUDGET ORDINANCE *continued*

Vice Mayor Bickel announced that the rolled back rate was 6.1876 mils, the percentage increase over the rolled back rate was 11.51%, and the millage rate to be levied was 6.9000 mils.

The motion to adopt and enact on second reading Ordinance 2023-15 approving the Ad Valorem Tax Millage Rate passed with all present voting aye.

The motion to adopt and enact on second reading Ordinance 2023-16 approving the Fiscal Year 2023-2024 Annual Budget passed with all present voting aye.

ORDINANCE 2023-17 –CODE AMENDMENT – R1 SINGLE FAMILY DWELLING DISTRICT – REMOVING REGULATIONS RELATING TO VOLUME AND MASSING OF TWO-STORY SINGLE FAMILY DWELLINGS AND ADDING A GUIDANCE STATEMENT

A motion was made by Councilmember Mullinix and seconded by Councilmember Searcy to adopt on first reading Ordinance 2023-17 entitled:

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, AMENDING APPENDIX C (CHAPTER 45), “ZONING,” OF THE VILLAGE CODE OF ORDINANCES TO RECOGNIZE THE STATE PREEMPTION OF PORTIONS OF ORDINANCE NO. 2022-18; AMENDING ARTICLE III, “DISTRICT REGULATIONS,” BY AMENDING SECTION 45-27, “R-1 SINGLE-FAMILY DWELLING DISTRICT,” TO REMOVE REGULATIONS RELATING TO THE VOLUME AND MASSING OF TWO-STORY SINGLE-FAMILY DWELLINGS AND TO ADD A GUIDANCE STATEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Mr. Rubin explained the purpose of the code amendment. Through the enactment of Florida Senate Bill 250, the Florida Legislature prohibited the Village from proposing more restrictive or burdensome amendments to its land development regulations retroactive to September 28, 2022. The legislation declared any such amendments void ab initio or of no force and effect as of the date of adoption. Mr. Rubin explained that after staff brought Senate Bill 250 to Council’s attention, Council recognized the preemption provisions. In conjunction with a repeal of the preempted provisions, Council directed staff to include a guidance statement encouraging property owners to use the former regulations as guidelines when constructing substantially altering two-story single-family dwellings. The Village Council further indicated that they would like to readopt the regulations upon expiration of the preemption provision of Senate Bill 250 on October 1, 2024.

Vice Mayor Bickel opened the public hearing.

John Samadi, 512 Marlin Road, expressed his concerns regarding the language in the proposed code amendment and gave alternative methods of creating language for the amendment.

Thereafter, the motion to adopt on first reading Ordinance 2023-17 passed with all present voting aye.

ORDINANCE 2023-18 – CODE AMENDMENT – CREATE PLANNING, ZONING AND ADJUSTMENT BOARD

A motion was made by Councilmember Mullinix and seconded by Councilmember Searcy to adopt on first reading Ordinance 2023-18 entitled:

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, AMENDING CHAPTER 21, “PLANNING AND DEVELOPMENT,” OF THE VILLAGE CODE OF ORDINANCES BY AMENDING ARTICLE II, “PLANNING COMMISSION,” TO CREATE A PLANNING, ZONING AND ADJUSTMENT BOARD AND REPEALING ARTICLE III, “BOARD OF ADJUSTMENT,” IN ITS ENTIRETY; AMENDING ARTICLE VI, “REZONING, VARIANCES AND WAIVERS,” OF CHAPTER 45 (APPENDIX C), “ZONING,” OF THE VILLAGE CODE OF ORDINANCES BY AMENDING SECTION 45-50, “VARIANCES,” TO PROVIDE PROCEDURES FOR VARIANCES AND ADOPTING A NEW SECTION 45-52, “ADMINISTRATIVE APPEALS;” REPLACING ALL VILLAGE CODE REFERENCES TO THE PLANNING COMMISSION WITH THE PLANNING, ZONING AND ADJUSTMENT BOARD; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Community Development Director Caryn Gardner-Young explained the purpose of the code amendment. Mrs. Gardner-Young explained that the amendment would officially combine the Planning Commission with the Planning & Zoning Board of Adjustments, which would require a name change and deletion of any reference to Board of Adjustment. Additionally, the amendment would combine the variance process into one section, streamline the development process, place burden of proof on applicants, provide a one (1) year expiration for variance if no action is take and clarifies the administrative appeal process. Mrs. Gardner-Young explained that staff performed an analysis of the code amendment and determined that it was consistent with the Comprehensive Plan’s Future Land Use Element and Housing Element. The amendment was also consistent with the code of ordinances by promoting the economic health of the Village and ensuring that Departments operations were efficient and effective.

Thereafter, the motion to adopt on first reading Ordinance 2023-18 passed with all present voting aye.

ORDINANCE 2023-19 – CHANGING THE DATE OF THE MARCH 2024 GENERAL ELECTION AND PROVIDE FOR AN ADDITIONAL QUALIFYING PERIOD

A motion was made by Councilmember Mullinix and seconded by President Pro Tem Aubrey to adopt on first reading Ordinance 2023-19 entitled:

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, CHANGING THE DATE OF THE MARCH 2024 GENERAL ELECTION TO COINCIDE WITH THE STATEWIDE PRESIDENTIAL PREFERENCE PRIMARY; ESTABLISHING THE DATES FOR QUALIFICATION OF CANDIDATES; PROVIDING FOR COMMENCEMENT AND LENGTH OF TERM OF OFFICE; PROVIDING FOR AN ADDITIONAL QUALIFYING PERIOD FOR VACANCIES ARISING AFTER INITIAL QUALIFYING PERIOD; PROVIDING FOR TRANSMITTAL TO THE SUPERVISOR OF ELECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2023-19 – CHANGING THE DATE OF THE MARCH 2024 GENERAL ELECTION AND PROVIDE FOR AN ADDITIONAL QUALIFYING PERIOD *continued*

Mr. Rubin explained that the date of the Village’s municipal election has to be changed every four (4) years due to the Presidential Preference Primary. The Supervisor of Elections and voting equipment would not be available on the Village’s scheduled municipal election, therefore necessitating the date change. The date of the Presidential Preference Primary is scheduled for March 19, 2024, which is one week later than the Village’s scheduled election of March 12, 2024. Additionally, due to concerns, regarding legislation passed that requires elected officials to file Form 6, the ordinance would provide for an additional qualifying period in the case that a Councilmember resigns after the initial qualifying period. The additional qualifying period would take place between January 4, 2024 and January 11, 2024 in order for the Supervisor of Elections to receive ballot language no later than January 12, 2024.

Vice Mayor Bickel opened the public hearing.

There being no comments from the public, Vice Mayor Bickel closed the public hearing.

Discussion ensued between Mr. Rubin and Councilmembers.

Thereafter, the motion to adopt on first reading Ordinance 2023-19 passed with all present voting aye.

CONSENT AGENDA APPROVED

Councilmember Mullinix moved to approve the Consent Agenda. President Pro Tem Aubrey seconded the motion, which passed with all present voting aye. The following items were approved:

Resolution approving a Blanket Purchase Order with Baker and Taylor, LLC in an amount not to exceed \$60,552 for Village Library books.

Resolution approving a Blanket Purchase Order with Bibliotheca, LLC in an amount not to exceed \$27,000 for Village Library access to electronic books and audiobooks.

Resolution approving a Blanket Purchase Order in the amount of \$30,000 for the Leisure Services Department with Ani Con Services, LLC for plumbing services.

Resolution approving a Proposal from March Management Systems, LLC for Pond Bank Stabilization at the North Palm Beach Country Club Golf Course at a total cost of \$50,000; authorizing execution of a Contract; and waiving the Village’s purchasing policies and procedures.

Resolution appointing the Village’s Representative and Alternative Representative to the Public Risk Management of Florida (“PRM”) Board of Directors.

RESOLUTION 2023-83 – JULY 4TH FIREWORKS DISPLAY CONTRACT

A motion was made by Councilmember Mullinix and seconded by Councilmember Searcy to adopt Resolution 2023-83 entitled:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA ACCEPTING THE PROPOSAL OF STARFIRE CORPORATION TO PROVIDE THE JULY 4TH FIREWORKS DISPLAY AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A CONTRACT RELATING TO SUCH SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

RESOLUTION 2023-83 – JULY 4TH FIREWORKS DISPLAY CONTRACT *continued*

Director of Leisure Services Zak Sherman explained that a Request for Proposals was advertised and only one (1) proposal was submitted from Starfire Corporation. Mr. Sherman stated that Starfire Corporation has provided the Village's July 4th fireworks display in past years. Mr. Sherman gave an overview of the fireworks provided in the proposal and stated that the contract was for three years and the cost was the same as last year.

Discussion ensued between Mr. Sherman and Councilmembers regarding the fireworks display and the locations of fireworks displays at the Country Club, and the possibility of incorporating a drone show for future July 4th events.

Thereafter the motion to adopt Resolution 2023-83 passed with all present voting aye.

RESOLUTION 2023-84 – AGREEMENT FOR CANAL DREDGING SERVICES

A motion was made by Councilmember Mullinix and seconded by President Pro Tem Aubrey to adopt Resolution 2023-84 entitled:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, ACCEPTING THE BID OF COSTON MARINE SERVICES, INC. FOR CANAL DREDGING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE AN AGREEMENT FOR SUCH SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

Assistant Public Works Director Jamie Mount explained that the purpose of the resolution was to enter into a contract with Coston Marine Services, Inc. to provide canal dredging services for the existing canal located between Atlantic Road and Ebbtide Drive, and for disposal of the dredged material. Mr. Mount explained why the dredging was necessary. Staff recommended moving forward with Coston Marine Services, Inc. to provide the canal dredging at a total cost of \$70,350 with a project contingency of \$7,035.

Vice Mayor Bickel stated that the Waterways Board has expressed concern that canal dredging could cause seawall damage.

Mr. Mount stated that the dredging would not affect any existing docks or seawalls.

Thereafter the motion to adopt Resolution 2023-84 passed with all present voting aye.

RESOLUTION 2023-85 – AMENDMENT TO FEE CONTRACT FOR LIEN FORECLOSURE SERVICES

A motion was made by Councilmember Searcy and seconded by President Pro Tem Aubrey to adopt Resolution 2023-85 entitled:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE EXISTING FEE CONTRACT WITH THE LAW FIRM OF GOREN, CHEROF, DOODY & EZROL, P.A. FOR LIEN FORECLOSURE SERVICES AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE THE AMENDMENT; AUTHORIZING THE FORECLOSURE OF EXISTING LIENS; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

RESOLUTION 2023-85 – AMENDMENT TO FEE CONTRACT FOR LIEN FORECLOSURE SERVICES *continued*

Mr. Rubin explained that the Village was ready to foreclose on two properties with existing liens. Staff reached out to the law firm that the Village contracted with since 2020 for foreclosure services. The law firm indicated that their fee for foreclosure services would need to be increased to \$250 per hour in order to be consistent with the rate that they were charging other municipalities for the same services. Mr. Rubin indicated that since reaching out to the law firm, one of the two properties came in and paid their lien and therefore would not be foreclosed. The other property was still on schedule to be submitted for foreclosure proceedings.

Discussion ensued between Mr. Rubin and Councilmembers regarding the property that paid off their lien.

Thereafter the motion to adopt Resolution 2023-85 passed with all present voting aye.

MAYOR AND COUNCIL MATTERS/REPORTS

Councilmember Mullinix announced that it was his son's birthday and that his son was attending the United States Marine Corp Candidate School and was named the platoon leader for his platoon. Councilmember Mullinix stated that he and his wife were very proud of their son.

Councilmember Searcy thanked staff for another successful "Touch-a-Truck" event.

Vice Mayor Bickel asked if there were any boards and committees vacancies.

Mr. Huff stated that there were approximately four (4) boards and committees vacancies forthcoming.

VILLAGE MANAGER MATTERS/REPORTS

Mr. Huff complemented staff for their work on the "Touch-a-Truck" event and stated that it was a very successful event with many people in attendance.

Mr. Huff stated that Mrs. Gardner-Young had a request regarding an initiative that she was working on with the Business Development Board.

Mrs. Gardner-Young stated that the Business Development Board would be sending out a survey asking municipalities if the Village was willing to allow them to use the Village's logo in a survey that they were going to send out.

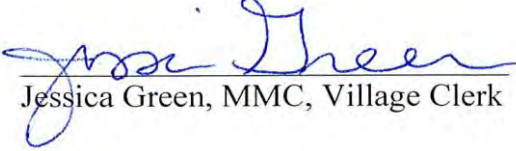
Council came to consensus to allow the Business Development Board to use the Village's logo in their survey.

Mr. Huff announced that as of October 1st, Samia Janjua would be the new Deputy Village Manager.

Council congratulated Mrs. Janjua on her promotion to Deputy Village Manager.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:54 p.m.


Jessica Green, MMC, Village Clerk

**VILLAGE OF NORTH PALM BEACH
OFFICE OF THE VILLAGE CLERK**

TO: Honorable Mayor and Council
THRU: Chuck Huff, Village Manager
FROM: Jessica Green, Village Clerk
DATE: October 12, 2023
SUBJECT: **RESOLUTION** – Designating authorized signers for Village vehicle transactions.

As part of the Village’s practices for the purchase, sale, or disposition of Village vehicles, it is customary for the Village Manager or the Village Clerk to sign the necessary documentation to effectuate said transactions.

In recent years, the Village has purchased and sold vehicles to vendors or customers located in a different county or state. Because the practice of registering vehicles and transferring vehicle titles differs from county to county and state to state, these agencies have questioned and/or sought confirmation that the required documentation for vehicle transactions was executed by authorized signers for the Village.

In accordance with Article IV, Section 5 of the Village Charter, the Village Manager is the only Village employee authorized to execute contracts on behalf of the Village. Based on the foregoing, the Village Manager possesses the legal authority to execute a Power of Attorney and/or other documentation to facilitate the vehicle registration process. In accordance with Article IV, Section 10 of the Village Charter, the Village Clerk is the custodian of the Village’s public records, which provides the legal authority to execute a Certificate of Sale or transfer of Certificate of Title for Village-owned vehicles sold to third parties.

In order to ease the facilitation of vehicle transactions between the Village and third parties, Village staff recommends the adoption of the attached Resolution formally designating the Village Manager and the Village Clerk as the authorized signers for documentation related to Village vehicle transactions.

The attached Resolution has been prepared and/or reviewed for legal sufficiency by the Village Attorney.

There is no fiscal impact.

Recommendation:

Village Staff requests Council consideration and approval of the attached Resolution designating the Village Manager and the Village Clerk as the authorized signers for documentation related to vehicle transactions for the Village.

RESOLUTION 2023-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, AUTHORIZING THE VILLAGE MANAGER AND THE VILLAGE CLERK TO EXECUTE ALL DOCUMENTS REQUIRED TO EFFECTUATE TRANSACTIONS INVOLVING VILLAGE VEHICLES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as part of its day-to-day operations, the Village routinely purchases vehicles for use by the Village and sells surplus vehicles; and

WHEREAS, the Village Charter specifically authorizes the Village Manager to execute contracts on behalf of the Village and designates the Village Clerk as the custodian of the Village's records; and

WHEREAS, because the procedures for registering vehicles and transferring titles varies from county to county and state to state, the Village Council wishes to formally designate both the Village Manager and the Village Clerk as authorized signatories for all documents required to effectuate such transactions; and

WHEREAS, the Village Council determines that the adoption of this Resolution is in the best interests of the Village and its residents.

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

Section 1. The foregoing recitals are ratified as true and incorporated herein.

Section 2. The Village Council hereby designates both the Village Manager and the Village Clerk as authorized signatories for all transactions related to the purchase and sale of Village vehicles and specifically authorizes both the Village Manager and the Village Clerk to execute all documents necessary to effectuate such transactions, including, but by no means limited to, certificates of sale, applications for certificates of title, and powers of attorney.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2023.

(Village Seal)

MAYOR

ATTEST:

VILLAGE CLERK

**VILLAGE OF NORTH PALM BEACH
HUMAN RESOURCES DEPARTMENT**

TO: Honorable Mayor and Council

THRU: Chuck Huff, Village Manager

FROM: Jennifer Cain, Human Resources Director

DATE: October 12, 2023

SUBJECT: **RESOLUTION** – Amendment to the FY2023-2024 Comprehensive Pay Plan to change the pay grade of the Building Official Position

Village Staff is recommending the Village Council consideration and adoption of the attached Resolution amending the FY2023-2024 Comprehensive Pay Plan to change the pay grade assigned to the position of Building Official.

Background:

The current pay range for the Building Official position is provided below:

Position	Grade	Annual (Min)	Annual (Max)
Building Official	121	\$82,943	\$138,238

The Village has identified that this position will be difficult to fill primarily because of the current pay scale. A recent survey with local municipalities shows that the Village is the one of the lower paying entities for this position:

Building Inspector:

Entity	Annual (Min)	Annual (Max)
City of Lake Worth Beach	\$74,235.00	\$95,607.00
City of Boynton Beach	\$77,254.94	\$115,903.84
City of Stuart	\$78,546.00	\$125,694.40
Village of Wellington	\$93,000.00	\$163,000.00
City of West Palm Beach	\$99,890.00	\$149,835.00
City of Greenacres	\$97,000.00	\$160,000.00
City of Palm Beach Gardens	\$100,688.96	\$161,061.59

In recognition of the duties/functions of this position and to remain competitive, Village Staff is proposing to increase the pay grade as shown in the table below and to allow the Village Manager some flexibility in negotiating the starting salary if necessary:

Position	Grade	Annual (Min)	Annual (Max)
Building Official	122	\$88,115	\$146,858

The Comprehensive Pay Plan is included within the overall Village Budget for Fiscal Year 2024, as approved by the Village Council through the adoption of Ordinance No. 2023-15. Section 5 of Ordinance No. 2023-15 specifically authorizes the Village Council to revise the Comprehensive Pay Plan by Resolution during the Fiscal Year without need to amend the Ordinance.

The attached Resolution has been prepared and/or reviewed by the Village Attorney for legal sufficiency.

Recommendation:

Village Staff Requests Council consideration and approval of the attached Resolution amending the Fiscal Year 2024 Comprehensive Pay Plan by changing the pay grade for the Building Official position to pay grade 122 in accordance with Village policies and procedures.

Position:	Building Official		
Current Grade:	121		
Current Range:	\$82,943 - \$138,238		
Incumbent(s)	Department	Hire Date	Salary(ies)
Wayne Cameron	Community Development	04/27/2020	\$117,194.48
Survey Data:	Building Official	Column1	Column2
City of Boynton Beach	Building Official	\$77,254.94	\$115,903.84
City of Greenacres	Building Official	\$97,000.00	\$160,000.00
City of Palm Beach Gardens	Building Official	\$100,688.96	\$161,061.59
City of West Palm Beach	Building Official	\$99,890.00	\$149,835.00
City of Stuart	Building Official	\$78,546.00	\$125,694.40
Village of Wellington	Building Official	\$93,000.00	\$163,000.00
City of Lake Worth Beach	Building Official	\$74,235.00	\$95,607.00
	Average Pay Grade Calculation	\$88,659.27	\$138,728.83
	75th Percentile	\$99,890.00	\$161,061.59
Current Pay Grade: 121	\$82,943 - \$138,238		
Pay Grade Options Based on Average:			
Pay Grade: 122	\$88,115 - \$146,858		

RESOLUTION 2023-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA AMENDING THE COMPREHENSIVE PAY PLAN ADOPTED AS PART OF THE FISCAL YEAR 2024 BUDGET TO REVISE THE PAY GRADE FOR THE POSITION OF BUILDING OFFICIAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, through the adoption of Ordinance No. 2023-15 (“Budget Ordinance”) on September 28, 2023, the Village Council adopted a Comprehensive Pay Plan as part of the annual budget for Fiscal Year 2024; and

WHEREAS, Section 5 of the Budget Ordinance authorizes the Village Council to revise the Comprehensive Pay Plan by Resolution during the course of the Fiscal Year; and

WHEREAS, at the recommendation of Village Staff, the Village Council wishes to increase the pay grade for the position of Building Official and determines that the adoption of this Resolution is in the best interests of the Village and its residents.

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

Section 1. The foregoing recitals are ratified as true and incorporated herein.

Section 2. The Village Council hereby amends the Comprehensive Pay Plan for Fiscal Year 2024 as follows:

Position: Building Official – Change from Pay Grade 121 (\$82,943 to \$138,238 annually) to **Pay Grade 122** (\$88,115 to \$146,858 annually).

Section 3. All other provisions of the Comprehensive Pay Plan, to the extent not specifically modified herein, shall remain in full force and effect.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2023.

(Village Seal)

MAYOR

ATTEST:

VILLAGE CLERK



VILLAGE OF NORTH PALM BEACH RESIDENTIAL AD-HOC COMMITTEE

REGULAR MEETING MINUTES MONDAY JULY 25, 2022

Present: Bill Whiteford, Chair
Robert Silvani
Shawn Woods
Cory Cross
Amanda McNally
Stephen St. John

Absent: Jake Furlott
Lisa Jensen
Lisa Interlandi

Staff: Alex Ahrenholz, Acting Community Development Director
Len Rubin, Village Attorney

I. CALL TO ORDER

Chair, Bill Whiteford, called the meeting to order at 6:32 pm.

II. ROLL CALL

All Ad Hoc Committee members were present except Jake Furlott, Lisa Interlandi, and Lisa Jensen.

III. DISCUSSION

Staff presentation was given by Alex Ahrenholz to provide updates to the second story massing regulations per previous meetings discussing the topic. Additional examples were provided for constructed homes and regulations from other municipalities. An example home meeting the adopted zoning-in-progress was shown to discuss the issue of areas open to below within the definition of the 75% floor area of the second floor.

Draft regulations were presented keeping the 75% of the second floor and adding an additional five-foot setback based on previous discussions from the committee. The regulations were proposed as two options, but the committee believed both should be required to limit the bulk and mass. The committee confirmed that the language would include a few different scenarios of construction methods and clarified the words used in the proposed regulations. A change to the measurement of the second-floor area was presented which includes all areas within the exterior walls. The new wording covers all areas open to below and the committee provided some tweaks to the wording of the regulation to make it clearer.

The Committee also confirmed the applicability of the building wall articulation and what building elements would constitute a building inset. Some of the members wanted to make sure an open balcony with railing would not need to meet the second floor setback because it is not considered part of the wall. Staff clarified that the definition provided in the section, they would be exempt.

AD HOC COMMITTEE MEETING MINUTES- JULY 25, 2022

The discussion moved to the issue of the hundreds of existing homes that would not be able to meet the proposed regulations. Staff agreed to draft some regulations for the committee to review which included an update to the existing non-conformities section.

The committee also discussed creating different regulations for smaller lots on a sliding scale because the additional 5-foot setback reduces the percentage of development area much more than a large lot. Members argued where best to place that number and what the small lot regulation would look like. They generally agreed that it is simpler to provide a consistent regulation across the entire district for all homes. A delineation might need to be created in the future, but would need to be a much more thorough analysis.

IV. PUBLIC COMMENT

Deborah Cross, 2560 Pepperwood Circle South, expressed support for the regulations but wanted clarification on the non-conformities. She also requested the addition of an angle of vision provision.

V. ADMINISTRATIVE MATTERS

- a. Scheduling next meeting
Committee agreed to coordinate the next meeting time through email.
- b. Staff Updates
- c. Committee member comments

Meeting adjourned at 7:39 pm

Minutes typed by Alex Ahrenholz



VILLAGE OF NORTH PALM BEACH RESIDENTIAL AD-HOC COMMITTEE

REGULAR MEETING MINUTES TUESDAY AUGUST 23, 2022

Present: Bill Whiteford, Chair
Lisa Interlandi
Cory Cross
Stephen St. John
Amanda McNally
Shawn Woods
Robert Silvani

Absent: Lisa Jensen
Jake Furlott

Staff: Alex Ahrenholz, Acting Community Development Director
Len Rubin, Village Attorney

Council Members: Mark Mullinix
Deborah Searcy

I. CALL TO ORDER

Chairman Whiteford called the meeting to order at 6:32 PM.

II. ROLL CALL

All members of the Residential Ad-Hoc Committee ("Committee") were present.

III. DISCUSSION

a. Second Story Massing

Presentation given by Alex Ahrenholz to finalize the wording of the second story massing regulations. Example homes, submitted under the ZIP, were presented for reference. The regulations effect on the different size lots was shown for specifics differences in potential development.

The proposed language was presented reflecting previous recommendations from the Committee. Additional 5 foot setback is proposed on all sides of the second floors. Wall articulation is required for large blank walls and the 75% requirement was maintained. A new non-conformities section was provided to address existing homes.

Discussion included identifying different scenarios and clarification of regulations.

Vote was taken by the Committee to approve the regulations as proposed by staff- 7-0

b. Accessory Structures

Presentation was given by Alex Ahrenholz showing the current regulations and issues that have arisen for some residents to provide for storage. Regulations in other local municipalities were considered for additional options. Targeted questions were asked of the Committee to considered including establishing a minimum and maximum size, maximum height, materials and permit regulations needed.

The Committee discussed the potential additional items that may be included in the regulations such as play structures and storage chests. They generally agreed that some items do not need regulation. Discussion included members sharing existing items in most properties in the Village. Accessory dwelling units could become an issue.

The disagreement ensued over overall height, but the Committee generally agreed that a height around 6-8 feet could be acceptable if doing a small shed. Discussion generally moved to the support for two different types of structures: a smaller one that is prefabricated and does not need a permit and anything larger would need a permit and be architecturally consistent with the principal structure. There was disagreement between where to establish the threshold between the two and the Committee requested additional examples for the next meeting.

c. Artificial Turf

Alex Ahrenholz gave a brief presentation about the current issues and installations around the Village. Staff proposed regulations for the Committee to consider.

Discussion included the request to receive additional examples, drainage specifications, and existing regulations from other municipalities. They also wanted to consider the allowance in the minimum landscape areas and if the regulations will treat putting greens the same.

IV. ADMINISTRATIVE MATTERS

- a. Staff asked whether the Committee would like to discuss tree requirements and/or accessory dwelling units at a future meeting.
- b. The Committee decided to have the next meeting on September 27, 2022 at 6pm.
- c. Jake Furlott officially resigned.

V. ADJOURNMENT

With there being no further business to come before the Board, the meeting adjourned at 8:59 PM.

Minutes typed by Alex Ahrenholz

**VILLAGE OF NORTH PALM BEACH
BUSINESS ADVISORY BOARD
MEETING MINUTES
TUESDAY, JULY 18, 2023**

1. CALL TO ORDER

David Talley called the meeting to order at 5:33 P.M.

2. ROLL CALL

Present: Nina Balgar, Veronica Frehm, Marshall Gillespie, Ronald Lantz, David Talley

Absent: Adam Jones, Nathan Kennedy

Staff: Caryn Gardner-Young, Community Development Director,

Kacy Morrone, Executive Assistant

Council Representative: Mark Mullinix

3. APPROVAL OF MINUTES

- Motion to approve minutes from May 16, 2023 by David Talley. Second by Veronica Frehm. Motion passed unanimously 5-0.
- Motion to approve minutes from June 20, 2023 meeting by David Talley. Second by Ronald Lantz. Motion passed unanimously 5-0.

4. PUBLIC COMMENTS

- None

5. NEW BUSINESS

- Caryn Gardner-Young provided a memo with a list of discussion topics, future projects, and potential events/programs for the Board to consider.

6. OLD BUSINESS

- David Talley asked for an update on Peroya Restaurant discussed at last meeting. Caryn Gardner-Young indicated that she had held a meeting with the restaurant owner to go over the timeline of her business and the Village's involvement. They also went over any of her questions and what she would like for her business in the future.

7. MEMBER COMMENTS

- The Board and Mr. Mullinix expressed appreciation and excitement over proposed ideas and projects for the Board, as well as the direct communication and involvement with Community Development Department.
- The Board indicated some confusion over the new board member attendance policy, specifically on whether Adam was still a member of the board.

8. STAFF COMMENTS

- Caryn Gardner-Young provided the Board a copy of the current sign code for review and comment at the next meeting.
- Caryn Gardner-Young asked for feedback and ideas on future projects of interest by the Board.
- Caryn Gardner-Young indicated meetings would be cancelled going forward if it was determined ahead of time that a quorum would not be present.

9. ADJOURNMENT

- Motion to adjourn by Marshall Gillespie. Second by Ronald Lantz.

Meeting adjourned at 6:24 P.M.

Minutes typed by Kacy Morrone

VILLAGE OF NORTH PALM BEACH
WATERWAYS ADVISORY BOARD DRAFT MEETING MINUTES
July 25, 2023 5:30 PM

I. CALL TO ORDER – Bill Hipple

II. ROLL CALL – MEMBERS :

Bill Hipple, Chairman present
Jerry Sullivan, Vice Chairman present
Mark Michels, Secretary present
Bruce Crawford, Member present

Absent:

Ed Preti, Member
Paul Bartlett, Member
George Alger, Member

III. VILLAGE GUESTS :

Hon. Mark Mullinax, Council Member
Chuck Huff, Village Manager
Zak Sherman, Director of Leisure Services

IV. APPROVAL OF MINUTES: from May 23, 2023 Approved 4-0

V. PUBLIC COMMENTS

None

VI. NEW BUSINESS –

Waterfront lots in corners (access and rights):

Multiple comments. Board agreed with Mr. Huff that dock permits would continue to be issued according to code. Mr. Huff indicated that impacted property owners / neighbors in dispute were to receive a letter already prepared by Village counsel encouraging cooperation. Perceived encroachment to be resolved by said parties independent of Village

Regarding the placement of ramp stickers: Board was in agreement that ramp stickers should be affixed to trailers rather than to vehicles

Anchorage Park Dock fees:

Zak Sherman, Director of Leisure Services – presented interim calculations regarding operating expenses for the marina. Board members indicated these calculations did not include cap cost estimates. The Board advised through resolution to support the staff proposed 2% increase in dock fees for the South docks and 4% increase in the North docks to help offset cap cost requirements in future

VII. OLD BUSINESS –

Vessel Size limitation discussion:

It was determined that current regulations on size of vessels is largely governed by current code including limits on property line and extension into waterways/canals and that further limitation could be considered if Council requested input beyond previous guidelines suggested by WAB

VIII. MEMBER COMMENTS

None

IX. STAFF COMMENTS

None

X. ADJOURNMENT 6:25 PM

**Respectfully submitted,
Mark Michels**



**VILLAGE OF NORTH PALM BEACH
PLANNING COMMISSION
REGULAR MEETING MINUTES
TUESDAY AUGUST 1, 2023**

Members Present: Donald Solodar, Chair
Cory Cross, Vice Chair
Thomas Hogarth
Jonathan Haigh
Kathryn DeWitt
Scott Hicks
Nathan Kennedy

Village Staff: Len Rubin, Village Attorney
Caryn Gardner-Young, Community Development Director
Charles Huff, Village Manager
Susan Bickel, Councilmember

I. CALL TO ORDER

Chairman Solodar called the meeting to order at 6:31 PM.

A. ROLL CALL

Jonathan Haigh joined the meeting at 6:39 PM at which time all members of the Planning Commission were present.

II. DELETIONS, ADDITIONS, OR MODIFICATIONS TO THE AGENDA

There were no modifications to the agenda.

II. PUBLIC COMMENT FOR NON-AGENDA ITEMS

There were no public comments.

III. APPROVAL OF MINUTES

Chairman Solodar stated that a correction needed to be made to the July 11, 2023 minutes to reflect that the 1200/1208 Marine Way petition was presented by the vendor's representative, not the applicant's representative.

The July 11, 2023 minutes were approved as amended - Motion to approve minutes by Kathryn DeWitt, seconded by Thomas Hogarth. Motion passed unanimously 6-0.

IV. DECLARATION OF EX PARTE COMMUNICATIONS

There were no Ex Parte Communications declared by the Board.

V. QUASI-JUDICIAL MATTERS / PUBLIC HEARING

Attorney Len Rubin swore in all persons speaking.

A. SITE PLAN AND APPEARANCE REVIEW

1. 109 Paradise Harbour Blvd (Schooner Bay) – Exterior Building Modifications

The property owner submitted an application to change the exterior color schemes for the buildings. The applicant’s representative, Paul Damigos, 144 Anchorage Drive South, presented his request for the color change.

Caryn Gardner-Young presented information on the project and recommendations. Village staff confirmed that the request is consistent with the Village’s Appearance Plan and meets the Village’s code requirements.

There were no public comments.

Motion: Nathan Kennedy moved to approve the application according to the staff report conditions of approval. Seconded by Scott Hicks. Motion passed unanimously (6-0).

2. 129 Lehane Terrace, 132 Wettaw Lane, and 118 Castlewood Drive (Castlewood Town Villas) – Exterior Building Modifications

The property owner submitted an application to change the exterior color schemes for the buildings. The applicant’s representative, Melinda Dzenuns, 129 Lehane Terrace, Unit 132, presented her request for the color change.

Caryn Gardner-Young presented information on the project and recommendations. Village staff confirmed that the request is consistent with the Village’s Appearance Plan and meets the Village’s code requirements.

There were no public comments.

Motion: Thomas Hogarth moved to approve the application according to the staff report conditions of approval. Seconded by Cory Cross. Motion passed unanimously (7-0).

VI. ATTORNEY PRESENTATION

Attorney Len Rubin stated that he will provide a PowerPoint presentation on Commission duties and responsibilities at the September meeting.

VI. COMMISSION MEMBER COMMENTS

Thomas Hogarth noted that Bellagio Dental still has their temporary grand opening signage posted. Caryn Gardner-Young stated that she will research and provide a report at the September meeting.

VII. STAFF UPDATES

- Caryn Gardner-Young stated that La Bamba restaurant plans to submit an application for modifications to exterior paint color and sign change.
- Due to the Labor Day holiday, Village staff recommended moving the September 5 meeting to September 12. The reschedule date was confirmed by the Planning Commission.
- Due to Election Day, Village staff recommended moving the November 7 meeting to November 14. The reschedule date was confirmed by the Planning Commission.

VIII. ADJOURNMENT

With there being no further business to come before the Commission, the meeting adjourned at 6:52 PM.

Minutes typed by Barbara Bruckner

**Village of North Palm Beach
Recreation Advisory Board Meeting
MINUTES
August 8, 2023 at 7:00 pm
Anchorage Park**

- 1) **Call to Order:** Chair Budnyk
- 2) **Roll Call:** Rita Budnyk, Leigh Arwood, Christi Chane, Ashley Knieriemen, Stephen Heiman, Jennifer Gold Dumas, Zak Sherman, and Mia St. John. Council Representative not present. Volunteer Belinda Morrell present.
- 2) **Approval of Minutes:** Meeting called to order by Rita at 7:00 p.m. Jennifer Dumas makes the motion to approve minutes from July; Mia St. John seconds.
- 3) **Public Comments:** No public comment.
- 4) **Director's Report:** The director expressed gratitude for the participation in the fishing tournament, which was successful despite the heat. The results of the tournament were shared, with winners in different categories for both adults and juniors. The expenses for the event are nearly balanced, and efforts are ongoing to gather and post event photos on social media.

Updates were given on ongoing projects. The playground improvement work is progressing, with adjustments being made to the swing set and the addition of new turf. The director mentioned future plans for the playground, including the installation of a Village logo embedded in the turf. Additionally, plans to add another shade over the swings are being considered.

Updates on facility maintenance were provided. The director highlighted the refurbishment of Osborne concession stand and the installation of new recycling bin lids at Anchorage and four (4) Little Libraries near each of the playgrounds. Lightning signs have been installed, except for the Community Center due to pending fence installation. The boat launch sticker transition to the trailer tongue was discussed, with council approval pending on August 10.

Updates on upcoming projects were shared, including the Seacoast construction project at Anchorage, master planning presentations from different companies on August 10, and the ongoing resurfacing of the gym floor. The possibility of drone fireworks shows was discussed, with the director presenting cost considerations and acknowledging community preferences for traditional fireworks.

- 5) **New Business:** During the meeting, the Board addressed several items under new business. First, the upcoming flag football season was discussed. Registration was extended to accommodate scheduling adjustments necessitated by ongoing field work. The Board discussed practice locations and game plans, and a comprehensive Year-at-a-glance sports flyer. The flag football season is scheduled to begin on October 7. Games will take place on Saturdays. The season will consist of 7 weeks instead of the initially planned 8 weeks. Efforts are being made to find coaches for both flag football and soccer.

Moving on, the discussion shifted to FRDAP grant applications for park improvements. A proposal was presented for the refurbishment of Veterans Park, highlighting plans for trellises, landscaping enhancements, and strategic placement of garbage cans. Additionally, a proposal was presented concerning the installation of new basketball court lights at Osborne Park. The Board showed strong support for both of these proposals.

- 6) **Old Business:** The Board reviewed and finalized changes to boat and trailer-related policies. Discussion centered on the revised policy for boat, trailer, and RV sales during the renewal period (or anytime during the lease year), including the requirement for proof of active engagement in purchasing a replacement. The consensus was reached on these policy updates.

Tornado Update: provided an update on the tornado recovery efforts. Haverland is still working on the field, and the target date for the field to be ready is September 18. The first game is scheduled for October 7 to allow for some flexibility. The director explained that preparations include soil and sod replacement, irrigation improvements, and the connection of seacoast water for irrigation. The playground shade, athletic field fence, retention area fences, and dugout concrete pads are all being redone. Repainting of the pavilion and lighting installation are in progress. Roof repairs are being addressed. Soccer goals have been delivered. Walking trail will be addressed as well.

Pickleball courts (added by the director at the meeting): The meeting addressed the interest in incorporating pickleball courts into the community's recreational facilities. Discussions revolved around potential locations, namely the Community Center and Osborne Park. The need for official pickleball courts to accommodate the sport's surging popularity was highlighted. The director outlined plans to submit a land and water grant application in FY24 for the Community Center. This grant would encompass renovations to the Community Center's parking lot and basketball courts (it needs resurfacing), with the possibility of adding four pickleball courts. Differing viewpoints emerged concerning the ideal pickleball court location. Several members did not want to eliminate any basketball courts. Some members advocated for Osborne Park, while others favored the Community Center. Concerns were voiced

about potential parking challenges and the necessity for thorough planning. The notion of converted the parking lot adjacent the basketball court at the Community Center to pickleball courts was discussed. Some Board members suggested deferring the final decision on pickleball court location until the master planning process concluded. The prospect of applying for the land and water grant in January was underscored as a progressive step forward.

7) Member Comments: None.

8) Staff Comments: None.

9) Adjournment: Meeting adjourns at 7:48 p.m. Stephen Heiman makes motion; Ashley Knieriemen seconds.

**VILLAGE OF NORTH PALM BEACH
BUSINESS ADVISORY BOARD
MEETING MINUTES
TUESDAY, AUGUST 15, 2023**

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1. CALL TO ORDER

David Talley called the meeting to order at 5:33 P.M.

2. ROLL CALL

Present: Nina Balgar, Veronica Frehm, Marshall Gillespie, Ronald Lantz, David Talley, Adam Jones, Nathan Kennedy

Staff: Caryn Gardner-Young, Community Development Director; Barbara Bruckner, Executive Assistant; Councilmember, Darryl Aubrey

3. APPROVAL OF MINUTES

- Motion to approve minutes from July 18, 2023 by Veronica Frehm. Second by Nathan Kennedy. Motion passed unanimously 7-0.

4. PUBLIC COMMENTS

- None.

5. NEW BUSINESS

- Business Liaison Program - Caryn explained how the program would work guiding each new business or new development applicant through the process of becoming a North Palm Beach business. She would be the point of contact person for now and then it would be the Principal Planner once that position has been filled. The Board agreed that the program would be a good idea.
- Business of the Month – Caryn explained that each month a business would be selected to be highlighted in the weekly eNews, monthly newsletter, social media, and on the Village website. Council could present them with a “Certificate of Excellence”. They could also receive a decal to display on their front window. If the business is a member of the Palm Beach North Chamber of Commerce, they could be highlighted on their website. The Board liked the idea and agreed that they should submit nominations to Caryn. Caryn will provide them with a nomination form for discussion at the next meeting. In addition to Business of the Month, the Board would like to highlight new businesses.

6. OLD BUSINESS

- Possible Board Topics/Actions – Caryn provided a memo with a list of discussion topics, future projects, and potential events/programs for the Board to consider. The Board expressed interest in the following for discussion at future meetings:
 1. Ribbon Cutting Ceremonies
 2. Taste of North Palm Beach (limited to select businesses?)
 3. Biannual State of the Community Development Department
 4. Biannual Business Community Workshop (begin in January 2024)
 5. Library of Resources tied to the Business Directory
 6. Business Expo
 7. Farmer’s Market (coordination and staffing could be an issue?)
 8. Quarterly meetings – Council requires monthly meetings
 9. Code Changes:
 - a) A “Certificate of Use” will replace the Business Tax Receipt - the approval/denial process will include a review of their business to ensure they are in the correct zoning district and in the appropriate building for their specific needs. Caryn would like to implement October 1, 2024.
 - b) Sign Code – will address temporary signs (for lease, grand opening, banners)
 - c) Outdoor Seating – Caryn would like to eliminate the need for Planning Commission approval and go straight to the permitting process. Caryn will send the revised language to the Board for discussion at a future meeting.
- Business Survey - She would like to publicize the last week of August or the first week of September and be open for three (3) weeks. The Board agreed that the data would provide good information. The Board requested a total number of current BTRs. Caryn will provide a list for the next meeting.

7. MEMBER COMMENTS

- None.

8. STAFF COMMENTS

- The next meeting will be on September 19, 2023.

9. ADJOURNMENT

- Motion to adjourn by Nathan Kennedy. Second by Adam Jones.

Meeting adjourned at 6:20 P.M.

Minutes typed by Barbara Bruckner

VILLAGE OF NORTH PALM BEACH LIBRARY ADVISORY BOARD MEETING MINUTES

DATE: August 22nd, 2023

CALL TO ORDER

Chair Bonnie Jenkins called the meeting to order at 7:00 pm.

ROLL CALL

Julie Morrell, Library Manager
Bonnie Jenkins, Chair
Phyllis Wissner, Member
Leslie Metz, Member
Carolyn Kost, Member
Kate DeWitt, member of the public
Francesca Wernisch, member of the public
Deborah Searcy, Village Council Member
Tina Chippas, Member
Brad Avakian, Secretary
Christine DelGuzzi, Vice Chair

APPROVAL OF MINUTES

Vice Chair DelGuzzi moved to accept the Minutes for July 25th, 2023, with minor correction (titling issue – correction of the heading over Old Business), motion seconded by Member Wissner. Motion passed unanimously.

MANAGER'S REPORT

Library Manager Julie Morrell reported the following:

- Facilities: Carpet to be cleaned, old/worn armchairs replaced, new Free Little Libraries that have been installed at some Village parks, TCS students painted/decorated them. Manager Morrell expects between 2000 to 4000 books to be donated from the county as a result from a grant, some of which can be used for new Little Libraries.
- Children's Programming: Four story times per week. Junior League starting up again and wants to offer free hearing/vision testing also. The Conservatory School ("TCS") will begin visits mid-September. Weekly Arts & Crafts ongoing. Art Appreciation once a month. Library Table will be at outreach events such as Touch-A-Truck, Heritage Day, Chili Cook-Off. 916 lunches and 968 snacks given out through June and July through summer free lunch program. Over 200 children signed up for summer reading and Library put on 91 programs; 2,739 attended these programs (80% increase from last year).
- Teen Programming: Teen volunteers totaled for 511 volunteer hours this summer, now back to normal after school volunteer schedule.
- Adult Programming: Knit and Crochet still meet every Monday, average 12 attendees. Adult Silent Film Series provides popcorn and lemonade or tea, 8 attendees at last screening. Book Club held August 3rd – What the Wind Knows by Amy Harmon (16 attendees). Bingo had 17 attend and Amerilife wants to continue to sponsor.

- Friends of the Library: Meetings will resume in the Fall.
- Statistics: Circulation is up from last year, but increase expected once school visits start up again.

NEW BUSINESS

Public Comment on the Agenda: Chair Jenkins suggested that Public Comment be moved down the agenda, members discussed. Vice Chair DelGuzzi made a motion to move Public Comment down the agenda to where Member Comments and Staff Comments, Member Wissner seconded and the motion passed unanimously.

Read for the Record: Council Member Searcy inquired about the Library's plans for participation in Read for the Record this year. Manager Morrell reported that the Library decided to buy copies of the book on their own because last year it took too long for delivery. Discussion of Village having won small municipality two years ago and wanting to regain title this year.

Author Talks: Council Member Searcy inquired about upcoming author talks. Library Manager Morrell stated that the Library lost money on previous events. Discussion of the goals of author talks, generating revenue versus adding value and providing experiences to Village residents. Discussion of cost and parking at Country Club.

OLD BUSINESS

Library Displays Policy Second Draft: Changes to draft introduced by Manager Morrell. Draft of Display Policy analyzed and discussed by members. Mrs. DeWitt raised concern about different content in teen room and children's section. Discussion by Council Member Searcy, public, and LAB members regarding separate spaces for teens and younger children and requirement that children under 13 must be accompanied by parent. Member Kost moved to approve with language added from prior draft, Member Wissner seconded the motion and it passed unanimously.

Facilities Assessment: Council Member Searcy raised the current Village audit of all facilities and that assessment of Library facilities (including AC and roof) is on the horizon.

MEMBER COMMENTS

None.

PUBLIC COMMENTS

None.

STAFF COMMENTS

None.

ADJOURNMENT

Meeting adjourned at 7:33 pm.

Respectfully submitted by Brad Avakian.

VILLAGE OF NORTH PALM BEACH
VILLAGE ATTORNEY'S OFFICE

TO: Honorable Mayor and Council

THRU: Chuck Huff, Village Manager

FROM: Leonard G. Rubin, Village Attorney

DATE: October 12, 2023

SUBJECT: **ORDINANCE 2nd Reading - Amending the R-1 Zoning Regulations to Repeal Portions of Ordinance No. 2022-18 (Massing of Two-Story Single-Family Dwellings) due to State Preemption and Providing a Guidance Statement**

Background:

Through the adoption of Ordinance No. 2022-18 on October 27, 2022, the Village Council implemented the recommendations of the Ad Hoc Committee and the Planning Commission and adopted new regulations to the address the volume and massing of two-story single-family dwellings in the R-1 single-family zoning district. These regulations are summarized as follows:

- Increasing the second-story front yard setback to 30 feet;
- Increasing the second-story rear yard setback to 25 feet;
- Increasing the second-story side yard setback to 15 feet;
- Requiring building wall articulation on all walls with an unbroken plane in excess of 15 feet in height and 30 feet in length in the form of a wall perpendicular to the property line at a minimum distance of 2 feet and extending parallel to the property line a minimum of 10 feet; and
- Limiting the floor area of the second-story to 75% of the floor area of the first story.

Through the enactment of Section 14 of Chapter 2023-304, Florida Statutes (Senate Bill 250), the Florida Legislature prohibited the Village from proposing more restrictive or burdensome amendments to its land development regulations retroactive to September 28, 2022. That legislation declared any such amendments *void ab initio* (of no force and effect as of the date of adoption).

Discussion:

After approval by the Governor, Staff brought the impact of Senate Bill 250 to the attention of the Council. The Council discussed the issue and recognized the preemption of the provisions listed above. However, in conjunction with the repeal of the preempted provisions, the Village Council directed Staff to include a guidance statement encouraging property owners to use the former regulations as guidelines when constructing or substantially altering two-story single-family dwellings. The Village Council further indicated that it wished to readopt the regulations upon expiration of the preemption provision of Senate Bill 250 on October 1, 2024. Both the guidance statement and the Council's intention to readopt the preempted provisions are codified in Section 45-27(E) of the attached Ordinance.

At its September 12, 2023 meeting, the Planning Commission conducted a public hearing on the proposed Ordinance and unanimously recommended approval.

There is no fiscal impact.

The attached Ordinance has been prepared by this office and reviewed for legal sufficiency.

At its September 28, 2023 regular meeting, the Village Council adopted the Ordinance on first reading without modification.

Recommendation:

Staff requests Village Council adoption on second and final reading of the attached Ordinance amending the Village's Zoning Code to repeal the provisions relating to the volume and massing of two-story single-family dwellings preempted by Senate Bill 250, providing a guidance statement encouraging the use of the now repealed regulations when constructing or substantially altering single-family dwellings; and indicating the Council's intent to readopt the regulations upon the expiration of the preemption provision of Senate Bill 250.

ORDINANCE NO. 2023-___

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, AMENDING APPENDIX C (CHAPTER 45), "ZONING," OF THE VILLAGE CODE OF ORDINANCES TO RECOGNIZE THE STATE PREEMPTION OF PORTIONS OF ORDINANCE NO. 2022-18; AMENDING ARTICLE III, "DISTRICT REGULATIONS," BY AMENDING SECTION 45-27, "R-1 SINGLE-FAMILY DWELLING DISTRICT," TO REMOVE REGULATIONS RELATING TO THE VOLUME AND MASSING OF TWO-STORY SINGLE-FAMILY DWELLINGS AND TO ADD A GUIDANCE STATEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, through the adoption of Ordinance No. 2022-18 on October 27, 2022, the Village Council implemented the recommendations of the Ad Hoc Committee and adopted new regulations to address the volume and massing of two-story single-family dwellings, including additional second-story setbacks, building wall articulation requirements, and a limitation on the floor area of the second story; and

WHEREAS, through the enactment of Section 14 of Chapter 2023-304, Laws of Florida (Senate Bill 250), the Florida Legislature prohibited the Village from proposing or adopting more restrictive or burdensome amendments to its land development regulations retroactive to September 28, 2022 and declared any such amendments void ab initio; and

WHEREAS, the Village Council wishes to recognize the preemption of the regulations set forth in Ordinance No. 2022-18 and provide a guidance statement encouraging voluntary compliance with such regulations; and

WHEREAS, on September 12, 2023, the Planning Commission, sitting as the Local Planning Agency, conducted a public hearing to review this Ordinance and provided a recommendation to the Village Council; and

WHEREAS, having considered the recommendation of the Planning Commission and conducted all required advertised public hearings, the Village Council determines that the adoption of this Ordinance is in the interests of the health, safety, and welfare of the residents of the Village of North Palm Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA as follows:

Section 1. The foregoing recitals are ratified as true and correct and are incorporated herein.

Section 2. The Village Council hereby amends Article III, "District Regulations," of Appendix C (Chapter 45), "Zoning," of the Village Code of Ordinances by amending Section 45-27, "R-1 Single-Family District," to read as follows (additional language is underlined and deleted language is ~~stricken through~~):

1 **Sec. 45-27. R-1 single-family dwelling district.**

2
3 A. *Uses permitted.* Within any R-1 single-family dwelling district no
4 building, structure, land or water shall be used except for one (1) or
5 more of the following uses:

- 6
7 1. Single-family dwellings with accessory buildings customarily
8 incident thereto, subject to each of the requirements set forth in
9 this section and throughout this chapter.
10
11 2. Public schools.
12
13 3. Parks and recreation facilities owned or leased by or operated
14 under the supervision of the Village of North Palm Beach.
15
16 4. Detached fence storage areas.
17
18 5. Satellite dish antenna.
19
20 6. Community residential homes. Community residential homes
21 of six (6) or fewer residents which otherwise meet the definition
22 of a community residential home, provided that such homes
23 shall not be located within a radius of one thousand (1,000) feet
24 of another existing such home with six (6) or fewer residents.
25
26 7. Family day care home.
27
28 8. Lamp post.
29
30 9. Decorative post structure.

31
32 B. *Building height regulations.* All single-family dwellings shall be
33 limited to two (2) stories and thirty feet (30') in height. For the purposes
34 of this subsection, height shall be measured from the average elevation
35 of the existing grade prior to land alteration for properties outside of
36 special flood hazard areas and from the required design flood elevation
37 for properties within special flood hazard areas. Height shall be
38 measured to the highest point of the following:

- 39
40 1. the coping of a flat roof and the deck lines on a mansard roof;
41
42 2. the average height level between the eaves and roof ridges or
43 peak for gable, hip or gambrel roofs; or
44
45 3. the average height between high and low points for a shed roof.

46
47 Decorative architectural elements, chimneys, mechanical equipment,
48 non-habitable cupolas, elevator shafts or similar appurtenances shall be

1 excluded from the foregoing height restrictions. Rooftops shall not be
2 used for pools, decks, or other spaces to congregate.

3
4 C. *Building site area regulations.* The minimum lot or building site area
5 for each single-family dwelling shall be seven thousand five hundred
6 (7,500) square feet and have a width of not less than seventy-five (75)
7 feet, measured at the building line.

8
9 D. *Yard space regulations.*

10
11 1. *Front yard.* There shall be a front yard of not less than twenty-
12 five (25) feet ~~for the first story and thirty (30) feet for the second~~
13 ~~story~~ measured from the street line to the front building line.

14
15 2. *Rear yard.* There shall be a rear yard of not less than twenty
16 (20) feet ~~for the first story and twenty five (25) feet for the~~
17 ~~second story~~ measured from the rear building line to the rear lot
18 line.

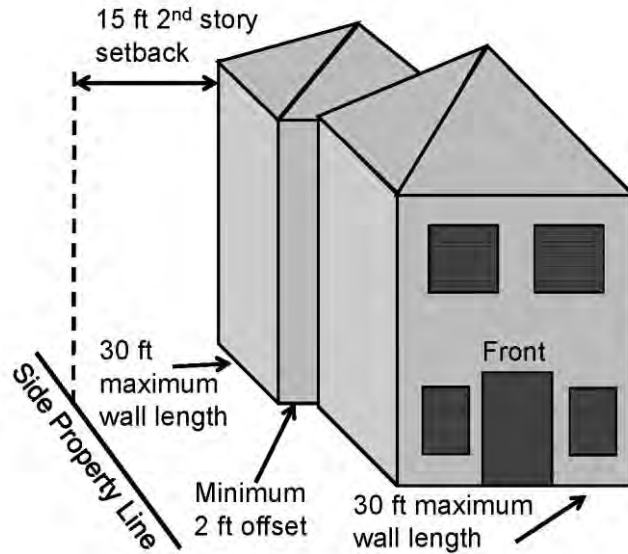
19
20 3. *Side yards.* There shall be a side yard on each side of the side
21 building line of not less than ten (10) feet ~~for the first story and~~
22 ~~fifteen (15) feet for the second story.~~ In the case of corner lots,
23 no building and no addition to any building shall be erected or
24 placed nearer than twenty (20) feet to the side street line of any
25 such lot.

26
27 (a) For a distance of one block on streets intersecting U.S.
28 #1, measured from the right-of-way line of said U.S. #1,
29 side yards of at least twenty-five (25) feet in depth shall
30 be provided.

31
32 4. ~~*Applicability of second story setback.* The second story setback~~
33 ~~shall apply only to the roofed portion of the second story of a~~
34 ~~two-story, single family dwelling and shall not apply to non-~~
35 ~~roofed second story patios or balconies. The second story~~
36 ~~setback for the rear yard shall not apply if any portion of the~~
37 ~~rear lot line abuts a waterway.~~

38
39 E. ~~*Building wall articulation.* Building wall articulation shall be provided~~
40 ~~on all walls with an unbroken plane in excess of fifteen (15) feet in~~
41 ~~height and thirty (30) feet in length. Window and door openings shall~~
42 ~~not be considered a plane break. The articulation shall be in the form~~
43 ~~of a wall perpendicular to the property line at a minimum distance of~~
44 ~~two (2) feet and extending parallel to the property line a minimum of~~
45 ~~ten (10) feet. The articulation must extend evenly over the entire height~~
46 ~~of the building wall (See Figure 1 below).~~

Figure 1 Building Wall Articulation



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~~F. — *Second-story floor area.* The floor area of the second story of a single-family dwelling shall not exceed seventy five percent (75%) of the floor area of the first story. For the purpose of this subsection, floor area shall include all areas lying within the building perimeter established by the interior side of the exterior walls of the building, including garages, covered patios, and other open-air exterior areas that are under roof. The floor area for the second story shall include areas open to below.~~

E. *Guidance on volume and massing of single-family dwellings.* Due to the legislature’s enactment of Chapter 2023-304, Laws of Florida (Senate Bill No. 250), the village was required to repeal recently adopted regulations relating to the volume and massing of single-family dwellings. However, to preserve the character of the village’s existing single-family neighborhoods, the village encourages the use of the following guidelines when constructing or substantially altering single-family dwellings:

1. *Second-story setbacks should be five (5) feet greater than the required first-story setbacks. These enhanced setbacks should apply to the roofed portion of the second story of a two-story, single-family dwelling.*
2. *Building wall articulation should be provided on all walls with an unbroken plan in excess of fifteen (15) feet in height and thirty (30) feet in length. The articulation should be in the form of a wall perpendicular to the property line at a minimum distance of two (2) feet, extending parallel to the property line a minimum of ten (10) feet, and should extend evenly over the entire height of the building wall (see Figure 1 above).*

1
2 3. The second-story of a single-family dwelling should not exceed
3 seventy-five percent (75%) of the floor area of the first story.
4 Floor area includes all areas lying within the building perimeter
5 established by the interior side of the exterior walls of the
6 building, including garages, covered patios and open-air
7 exterior areas under roof. The floor area of the second story
8 should include areas open to below.

9
10 The village council intends to readopt these regulations as of October
11 1, 2024.

12
13 Ⓔ F. *Off street parking regulations.* At least one parking space measuring at
14 at least nine (9) feet by eighteen (18) feet (one hundred sixty-two (162)
15 square feet) shall be provided. All parking spaces shall consist of a
16 durable surfaced area as approved by the community development
17 director, and may be enclosed in the dwelling, in an accessory building
18 or in an unenclosed area or a driveway. All vehicles parking on a lot
19 must be parked on a durable surface.

20
21 Ⓔ G. *Accessory structures.* One detached automobile garage and one open-
22 air pavilion may be constructed on any lot within the R-1 single-family
23 dwelling district provided that all requirements of this chapter are met.
24 Open air pavilions shall be subject to the following additional
25 conditions and restrictions:

26
27 1. *Permitting.*

28
29 (a) All open-air pavilions must be permitted in accordance
30 with all Florida Building Code and Village Code
31 requirements.

32
33 (b) Open-air pavilions meeting the definition of a
34 traditional chickee hut are exempt from the Florida
35 Building Code but shall be subject to consistency
36 review by the village. Consistency shall be
37 demonstrated through the issuance of a zoning permit
38 and shall require the submittal of the following
39 information:

40
41 (1) A survey that includes scaled dimensions of the
42 proposed structure, including setbacks;

43
44 (2) Proof that the builder of the chickee hut is a
45 member of either the Miccosukee Tribe of
46 Indians of Florida or the Seminole Tribe of
47 Florida (such proof consisting of a copy of the
48 tribal member's identification card); and
49

1 (3) Drawings of the proposed structure depicting, at
2 a minimum, the overall design, dimensions, roof
3 materials, and height.
4

5 2. *Dimensions.* Open-air pavilions shall not exceed two hundred
6 (200) square feet in floor area. The floor area shall be measured
7 from outside the support posts, provided that the roof overhang
8 does not exceed three (3) feet from the support posts. If the roof
9 overhang exceeds three (3) feet, the floor area shall consist of
10 the entire roofed area. For structures supported by a single-pole,
11 i.e., umbrella shape, the floor area shall be measured from the
12 drip line of the roof material.
13

14 3. *Height.* Open-air pavilions shall not exceed twelve (12) feet in
15 height or the height of the principal building located on the lot,
16 whichever is more restrictive. For sloped roofs, the height shall
17 be measured at the mean roof height.
18

19 4. *Location and Setbacks.*
20

21 (a) No open-air pavilion may be erected within ten (10) feet
22 of the side property line. This side setback shall be
23 increased to twenty (20) feet for corner lots.
24

25 (b) No open-air pavilion may be erected within seven and
26 one-half (7½) feet of the rear property line.
27

28 (c) No open-air pavilion or any portion thereof may be
29 erected between the front line of the principal building
30 and the front property lot line, within a utility or
31 drainage easement, or within a required landscape
32 buffer.
33

34 5. *Use restrictions.*
35

36 (a) An open-air pavilion shall be used only for private
37 recreational activities as an accessory use to the
38 principal residential use and shall not be used for
39 habitation, for a tool room, storage room or workshop,
40 or for any commercial purpose whatsoever.
41

42 (b) Open-air pavilions shall not be used for storage of items
43 of personal property, including, but not limited to, the
44 following:
45

46 (1) Operable or inoperable vehicles, boats, boat
47 trailers, utility trailers or similar items of
48 personal property;

- (2) Building materials, lawn equipment, tools or similar items; and
- (3) Ice boxes, refrigerators and other types of food storage facilities with the exception of under-counter units.
- (c) No gas, charcoal or propane grills, stoves or other types of cooking devices may be stored or utilized within a traditional chickee hut.

6. *Maintenance.* Open-air pavilions shall be maintained in good repair and in sound structural condition. Painted or stained surfaces shall be free of peeling paint, mold and mildew and void of any evidence of deterioration.

7. *Design.*

- (a) Open-air pavilions, with the exception of traditional chickee huts, pergolas and other structures with only partial or slatted roofs, shall incorporate the same types of building materials and be consistent with the architectural theme or style of the main or principal building.
- (b) At the request of a property owner, the community development director may approve the use of different building materials or alternate architectural themes or styles when such materials, themes or styles are complementary to the main or principal building.
- (c) Should the community development director deny the request for different building materials or alternate architectural themes or styles, a property owner may appeal this decision to the planning commission by submitting a written request for a hearing to the community development director within thirty (30) calendar days of the date of the determination. The appeal shall be placed on the next available agenda and the decision of the planning commission shall be final, subject only to judicial review by writ of certiorari.

I H. *Mechanical equipment.* All non-roof-mounted mechanical equipment shall be located behind the front building face of the principal structure in either the side yard or the rear yard. Such equipment shall be located adjacent to the principal structure whenever practicable, provided, however, that all mechanical equipment shall be located at least five (5) feet from the side property line and at least seven and one-half feet (7½) from the rear property line.

1
2 ¶ I. *Minimum landscaped area.*
3

- 4 1. All single-family dwellings shall have a minimum landscaped
5 area of thirty percent (30%).
6
7 2. All single-family dwellings (both one and two story) shall
8 provide a minimum landscaped area of fifty percent (50%) in
9 the required twenty-five-foot (25') front yard setback.
10 Properties with frontage along urban collector roads
11 (Lighthouse Drive and Prosperity Farms Road) shall provide a
12 minimum landscaped area of forty percent (40%) in the
13 required twenty-five-foot (25') front yard setback. Properties
14 having an irregular lot shape, meaning a lot which is not close
15 to rectangular or square and in which the width of the property
16 at the front property line is less than required by the underlying
17 zoning district, shall provide a minimum landscaped area of
18 twenty-five percent (25%) in the required twenty-five-foot
19 (25') front yard setback.
20
21 3. A property owner who meets the overall minimum landscaped
22 area requirement set forth in subsection (1) above and who does
23 not meet the minimum landscaped area requirement in the
24 twenty-five-foot (25') front yard setback set forth in subsection
25 (2) above may request a waiver of up to five percent (5%) of
26 the minimum required area by filing a request with the
27 Community Development Department. The request shall be
28 forwarded to the Planning Commission for final action. A
29 property owner seeking such a waiver shall be required to
30 demonstrate to the Planning Commission that he or she has
31 made a reasonable attempt to comply with the required
32 minimum landscaped area within the front yard setback and has
33 mitigated any deficiency through the installation of enhanced
34 landscaping materials, the use of permeable hardscape
35 materials or some other acceptable means.
36

37 For the purposes of this subsection, the term minimum landscaped area
38 shall mean a pervious landscaped area unencumbered by structures,
39 buildings, paved parking lots, sidewalks, sports courts, pools, decks, or
40 any impervious surface. Landscape material shall include, but not be
41 limited to, grass, ground covers, bushes, shrubs, hedges or similar
42 plantings, or decorative rock or bark. No landscape material shall be
43 used for parking. However, pervious surfaces used for the parking of
44 recreational equipment in side and rear yards shall be included in the
45 calculation of the minimum landscaped area.
46

47 With respect to building permits for renovations of existing single-
48 family dwellings, the minimum landscaped area standards shall apply

1 only to the extent that the proposed scope of work impacts the
2 applicable standard.

3
4 † J. *Maximum driveway width in swale.* The total width of driveways from
5 the edge of the public roadway to the abutting privately-owned property
6 shall not exceed a total of thirty-two feet (32') in width at the property
7 line, excluding flares. For lots with ninety (90) or more feet of public
8 roadway frontage, the total width of driveways from the edge of the
9 public roadway to the abutting privately-owned private shall not exceed
10 a total of forty feet (40') in width at the property line, excluding flares.
11 Each side of a flared driveway shall be no more than three feet (3')
12 wider than the rest of the driveway.
13

14 Section 3. The provisions of this Ordinance shall become and be made a part of the Code of the
15 Village of North Palm Beach, Florida.

16
17 Section 4. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for
18 any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such
19 holding shall not affect the remainder of this Ordinance.
20

21 Section 5. All ordinances or parts of ordinances and resolutions or parts of resolutions in conflict
22 herewith are hereby repealed to the extent of such conflict.
23

24 Section 6. This Ordinance shall take effect immediately upon adoption.
25

26 PLACED ON FIRST READING THIS ____ DAY OF _____, 2023.
27

28 PLACED ON SECOND, FINAL READING AND PASSED THIS ____ DAY OF _____,
29 2023.
30

31
32 (Village Seal)

MAYOR

33
34
35 ATTEST:
36

37 _____
38 VILLAGE CLERK
39

40 APPROVED AS TO FORM AND
41 LEGAL SUFFICIENCY:
42

43 _____
44 VILLAGE ATTORNEY

**VILLAGE OF NORTH PALM BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Honorable Mayor and Council

THRU: Chuck Huff, Interim Village Manager

FROM: Caryn Gardner-Young, Community Development Director

DATE: October 12, 2023

SUBJECT: **ORDINANCE 2nd Reading** – Amendments to Chapter 21, Article II to create the Planning, Zoning and Adjustment Board, Repeal Chapter 21, Article III referencing Board of Adjustment, Amending Chapter 45, Article VI Section 45-30 to provide procedures for variances and adopting a new section called administrative appeals and replacing all Village code references to the Planning Commission with the Planning, Zoning and Adjustment Board,

Background

The Village's Code of Ordinances created a Planning Commission which powers included:

- (1) Perform any duties which lawfully may be assigned to it by the village council.
- (2) Perform any other duties which may be assigned to it under this Code.
- (3) The planning commission of the village is hereby designated as the governmental entity to act as the "local planning agency" in accordance with chapter 163, Florida Statutes.
- (4) The planning commission shall serve as the village's board of adjustment to consider variances and administrative appeals.
- (5) The planning commission has additional duties that include site plan and appearance review (see sections [6-30](#) through [6-60](#)); the responsibility to make recommendations on special exceptions (see [section 45-16.2](#)); and the authority to approve waivers on land in the C-MU and C-NB zoning districts only (see [section 45-51](#)).

The Village's Code of Ordinances also created a Board of Adjustment, whose duties are to hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any land development regulation and to authorize variances from the terms of the Code of Ordinances.

On March 19, 2019 the Village Council, through Ordinance 2019-01 approved a zoning text amendment which required the Planning Commission to assume the duties of the Board of Adjustment. However, the Ordinance never eliminated the Board of Adjustment. It has been four years since this change was made and the Planning Commission has successfully assumed all the duties and responsibilities of the Board of Adjustment.

Village Staff is proposing to formally eliminate the Board of Adjustment and fully incorporate its duties in the newly created Planning & Zoning Adjustment Board. The proposed amendment will continue the process to streamline development issues for both residents and developers. Combining the boards together provides more efficiency which will only improve with the elimination of the Board of Adjustment. Additionally, providing a more appropriate name to the new board will avoid any confusion regarding the development process within the Village. There are no proposed changes to the functions, duties or responsibilities of the Planning Commission.

As for the variance process, Village Staff is proposing several changes which are summarized as follows:

1. Format – the proposed amendments will move all relevant provisions to one location so the applicant does not have to look at several code provisions to find out what is needed for a variance;
2. Process – the proposed amendments will streamline the development process and provide a clear application process so the applicant knows what to include with the application to avoid multiple submittals;
3. Burden of Proof – the proposed amendments will add a burden of proof so the applicant knows he/she/they have to show their request meets the variance requirements;
4. Expiration – the proposed amendments will add an expiration of the variance within one (1) year if a building permit has not been issued or if the permit expires to prevent a variance from lingering;
5. Administrative Appeals – the proposed amendments will streamline the appeal process by including what is required for the application, defining what powers the new Board has, delineating the burden of proof needed and requiring that appeals be filed within 15 days from the administrative decision or order.

Legal Review

The attached Ordinance has been prepared/reviewed by the Village Attorney for legal sufficiency.

Fiscal Impacts

N/A

First Reading

At the September 28, 2023 meeting, the Village Council approved the attached Ordinance on first reading by a vote of 4-0.

Recommendation:

Village Staff recommends Village Council consideration and approval on second and final reading of the attached Ordinance amending the Village's regulations to combine the Planning Commission and Board of Adjustment into the Planning Zoning Adjustment Board and amending the Variance provisions to be more efficient and effective.

1 **ORDINANCE NO. 2023-__**
2

3 AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH
4 PALM BEACH, FLORIDA, AMENDING CHAPTER 21, "PLANNING AND
5 DEVELOPMENT," OF THE VILLAGE CODE OF ORDINANCES BY
6 AMENDING ARTICLE II, "PLANNING COMMISSION," TO CREATE A
7 PLANNING, ZONING AND ADJUSTMENT BOARD AND REPEALING
8 ARTICLE III, "BOARD OF ADJUSTMENT," IN ITS ENTIRETY; AMENDING
9 ARTICLE VI, "REZONING, VARIANCES AND WAIVERS," OF CHAPTER 45
10 (APPENDIX C), "ZONING," OF THE VILLAGE CODE OF ORDINANCES BY
11 AMENDING SECTION 45-50, "VARIANCES," TO PROVIDE PROCEDURES
12 FOR VARIANCES AND ADOPTING A NEW SECTION 45-52,
13 "ADMINISTRATIVE APPEALS;" REPLACING ALL VILLAGE CODE
14 REFERENCES TO THE PLANNING COMMISSION WITH THE PLANNING,
15 ZONING AND ADJUSTMENT BOARD; PROVIDING FOR CODIFICATION;
16 PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS;
17 PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.
18

19 WHEREAS, the Village Council wishes to revise Chapter 21, "Planning and Development," and
20 Chapter 45 (Appendix C), "Zoning," of the Village Code of Ordinances to create a Planning, Zoning
21 and Adjustment Board and transfer the criteria and procedures for variances and administrative
22 appeals from Chapter 21 to Chapter 45; and
23

24 WHEREAS, on September 12, 2023, the Planning Commission, sitting as the Local Planning Agency,
25 conducted a public hearing to review this Ordinance and provided a recommendation to the Village
26 Council; and
27

28 WHEREAS, having considered the recommendation of the Planning Commission and conducted all
29 required advertised public hearings, the Village Council determines that the adoption of this
30 Ordinance is in the interests of the health, safety, and welfare of the residents of the Village of North
31 Palm Beach.
32

33 NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF
34 NORTH PALM BEACH, FLORIDA as follows:
35

36 Section 1. The foregoing recitals are ratified as true and correct and are incorporated herein.
37

38 Section 2. The Village Council hereby amends Article II, "Planning Commission," of Chapter
39 21, "Planning and Development," of the Village Code of Ordinances to read as follows (additional
40 language is underlined and deleted language is ~~stricken through~~):
41

42 ARTICLE II. PLANNING, ZONING AND ADJUSTMENT BOARD COMMISSION
43

44 **Sec. 21-11. Composition; conduct generally.**
45

- 46 (a) *Created.* A planning, zoning and adjustment board ~~commission~~ for the
47 village is hereby created.
48

1 (b) *Membership; terms.* The planning, zoning and adjustment board ~~commission~~
2 shall consist of seven (7) members. The village council shall appoint
3 members on an annual basis during April of each year to take effect the
4 following May 1 of each year for staggered terms of two (2) years as
5 determined by the village council. The planning, zoning and adjustment
6 board ~~commission~~ shall consist of one (1) land use planner or architect, one
7 (1) architect, one (1) civil engineer, one (1) person engaged in business within
8 the corporate limits of the village, and three (3) members who need not be
9 engaged in any particular business or profession.

10
11 (c) *Meetings.* The planning, zoning and adjustment board ~~commission~~ shall meet
12 at least once each month on a date to be determined by the planning
13 commission board.

14
15 (d) *Powers, duties.* The planning, zoning and adjustment board ~~commission~~ shall
16 have the following powers and duties:

17
18 (1) Perform any duties which lawfully may be assigned to it by the village
19 council.

20
21 (2) Perform any other duties which may be assigned to it under this Code.

22
23 (3) The planning, zoning and adjustment board ~~commission~~ of the village
24 is hereby designated as the governmental entity to act as the "local
25 planning agency" in accordance with chapter 163, Florida Statutes.

26
27 (4) The planning, zoning and adjustment board ~~commission~~ shall serve
28 as the village's board of adjustment to consider have the authority to
29 grant variances in accordance with section 45-50 and consider and
30 adjudicate administrative appeals in accordance with section 45-52.

31
32 (5) The planning, zoning and adjustment board ~~commission~~ has
33 additional duties that include site plan and appearance review (see
34 sections 6-30 through 6-60); the responsibility to make
35 recommendations on special exceptions (see section 45-16.2); and the
36 authority to approve waivers on land in the C-MU and C-NB zoning
37 districts only (see section 45-51).

38
39 **Sec. 21-12. Changes to zoning ordinances.**

40
41 (a) The village council may amend or supplement the regulations and districts
42 established by this Code after receiving the recommendation of the planning,
43 zoning and adjustment board ~~commission~~. Proposed changes may be
44 suggested by the village council or the village manager. Changes to zoning
45 district boundaries may be requested in accordance with section 45-49.

46
47 (b) The planning, zoning and adjustment board ~~commission~~, regardless of the
48 source of the proposed change, shall hold a public hearing or hearings
49 thereon, with due public notice, but shall in any case, if any change is to be
50 considered by the planning, zoning and adjustment board ~~commission~~,

1 submit in writing its recommendations on the proposed change to the village
2 council for official action. The village council shall hold a public hearing
3 thereon, with due public notice, if any change is to be considered and shall
4 then act on the proposed change. If the recommendation of the planning,
5 zoning and adjustment board ~~commission~~ is adverse to the proposed change,
6 such change shall not become effective except by an affirmative vote of a
7 majority of the entire membership of the village council, after due public
8 notice.

9
10 Section 3. The Village Council hereby deletes Article III, "Board of Adjustment," of Chapter 21,
11 "Planning and Development," of the Village Code of Ordinances in its entirety (deleted language is
12 ~~stricken through~~):

13
14 **~~ARTICLE III. BOARD OF ADJUSTMENT~~**

15
16 **~~Sec. 21-21. Composition; conduct generally.~~**

17
18 ~~(a) — *Created.* A board of adjustment for the village is hereby created.~~

19
20 ~~(b) — *Membership.* The members of the planning commission shall serve as the~~
21 ~~board of adjustment.~~

22
23 ~~(c) — *Powers, duties.* The board of adjustment shall have the following powers and~~
24 ~~duties:~~

25
26 ~~(1) — *Appeals.* To hear and decide appeals when it is alleged that there is~~
27 ~~error in any order, requirement, decision or determination made by an~~
28 ~~administrative official in the enforcement of any land development~~
29 ~~regulation.~~

30
31 ~~(2) — *Variances:*~~

32
33 ~~a. — To authorize such variances from the terms of this code as will~~
34 ~~not be contrary to the public interest when, owing to special~~
35 ~~conditions, a literal enforcement of the provisions of the~~
36 ~~ordinance would result in unnecessary and undue hardship. In~~
37 ~~order to authorize any variance, the board of adjustment must~~
38 ~~find:~~

39
40 ~~1. — That special conditions and circumstances exist which~~
41 ~~are peculiar to the land, structure or building involved~~
42 ~~and which are not applicable to other lands, structures~~
43 ~~or buildings in the same zoning district;~~

44
45 ~~2. — That the special conditions and circumstances do not~~
46 ~~result from the actions of the applicant;~~

47
48 ~~3. — That granting the variance requested will not confer on~~
49 ~~the applicant any special privilege that is denied by the~~

1 ordinance to other lands, buildings or structures in the
2 same zoning district;

3
4 4. — That literal interpretation of the provisions of the subject
5 ordinance would deprive the applicant of rights
6 commonly enjoyed by other properties in the same
7 zoning district under the terms of the ordinance and
8 would work unnecessary and undue hardship on the
9 applicant;

10
11 5. — That the variance granted is the minimum variance that
12 will make possible the reasonable use of the land,
13 building or structure;

14
15 6. — That the grant of the variance will be in harmony with
16 the general intent and purpose of the ordinance and that
17 such variance will not be injurious to the area involved
18 or otherwise detrimental to the public welfare.

19
20 b. — In granting any variance, the board of adjustment may prescribe
21 appropriate conditions and safeguards in conformity with this
22 code. Violation of such conditions and safeguards, when made
23 a part of the terms under which the variance is granted, shall be
24 deemed a violation of this code.

25
26 e. — The board of adjustment may prescribe a reasonable time limit
27 within which the action for which the variance is required shall
28 begin or be completed or both.

29
30 d. — Under no circumstances, except as permitted above, shall the
31 board of adjustment grant a variance to permit a use not
32 generally permitted in the zoning district involved or any use
33 expressly or by implication prohibited by the terms of the
34 ordinance in the zoning district. No nonconforming use of
35 neighboring lands, structures or buildings in the same zoning
36 district and no permitted use of lands, structures or buildings in
37 other zoning districts shall be considered grounds for the
38 authorization of a variance.

39
40 e. — The concurring vote of a majority of all members of the board
41 shall be necessary to grant a variance pursuant to this section.

42
43 (d) — *Review of administrative orders.* In exercising its powers, the board of
44 adjustment may, upon appeal and in conformity with provisions of this chapter,
45 reverse or affirm, wholly or partly, or may modify the order, requirement,
46 decision or determination made by an administrative official in the
47 enforcement of any zoning ordinance or regulation adopted pursuant to this
48 part, and may make any necessary order, requirement, decision or
49 determination, and to that end shall have all the powers of the officer from
50 whom the appeal is taken. The concurring vote of a majority of all the members

1 of the board shall be necessary to reverse any order, requirement, decision or
2 determination of any such administrative official or to decide in favor of the
3 applicant on any matter upon which the board is required to pass under any
4 such ordinance.
5

6 ~~(e) — Appeals to board from decision of administrative official. Appeals to the board~~
7 ~~of adjustment may be taken by any person aggrieved or by any officer, board~~
8 ~~or bureau of the governing body affected by any decision of an administrative~~
9 ~~official under any zoning ordinance enacted pursuant to this part. Such appeal~~
10 ~~shall be taken within thirty (30) days after rendition of the order, requirement,~~
11 ~~decision or determination appealed from by filing with the officer from whom~~
12 ~~the appeal is taken and with the board of adjustment a notice of appeal~~
13 ~~specifying the grounds thereof. The appeal shall be in the form prescribed by~~
14 ~~the rules of the board. The administrative official from whom the appeal is~~
15 ~~taken shall, upon notification of the filing of the appeal, forthwith transmit to~~
16 ~~the board of adjustment all the documents, plans, papers or other materials~~
17 ~~constituting the record upon which the action appealed from was taken.~~
18

19 ~~(f) — Stay of work and proceedings on appeal. An appeal to the board of adjustment~~
20 ~~stays all work on the premises and all proceedings in furtherance of the action~~
21 ~~appealed from, unless the official from whom the appeal was taken shall certify~~
22 ~~to the board of adjustment that, by reason of facts stated in the certificate, a~~
23 ~~stay would cause imminent peril to life or property. In such case, proceedings~~
24 ~~or work shall not be stayed except by a restraining order which may be granted~~
25 ~~by the board of adjustment or by a court of record on application, on notice to~~
26 ~~the officer from whom the appeal is taken and on due cause shown.~~
27

28 ~~(g) — Hearing of appeals. The board of adjustment shall fix a reasonable time for the~~
29 ~~hearing of the appeal and decide the same within a reasonable time. Public~~
30 ~~notice of all hearings shall be provided as required by section 21-3 of this~~
31 ~~Code. Upon the hearing, any party may appear in person, by agent or by~~
32 ~~attorney. Appellants may be required to assume such reasonable costs in~~
33 ~~connection with appeals as may be determined by the governing body through~~
34 ~~action in setting of fees to be charged for appeals.~~
35

36 ~~(h) — Judicial review of decisions of board. Any person or persons, jointly or~~
37 ~~severally, aggrieved by any decision of the board of adjustment, or any officer,~~
38 ~~department, board, commission or bureau of the governing body, may apply to~~
39 ~~the circuit court in the judicial circuit where the board of adjustment is located~~
40 ~~for judicial relief within thirty (30) days after rendition of the decision by the~~
41 ~~board of adjustment. Such an appeal shall not be a hearing de novo, but shall~~
42 ~~be limited to appellate review of the record created before the board of~~
43 ~~adjustment.~~
44

45 Section 4. The Village Council hereby amends Article VI, “Rezoning; Variances; Waivers,” of
46 Chapter 45 (Appendix C), “Zoning,” of the Village Code of Ordinances to read as follows (additional
47 language is underlined and deleted language is ~~stricken through~~):
48

49 ARTICLE VI. REZONINGS; VARIANCES; WAIVERS; ADMINISTRATIVE APPEALS
50

1
2 **Sec. 45-50. Variances.**
3

4 (1) Generally. All applications for variances to regulations or restrictions
5 established by this ordinance chapter or otherwise permitted by this code shall
6 be initiated by application to the village. The application may be made by any
7 property owner or tenant or by a governmental office, department, board or
8 bureau and filed with the community development department of the village.
9 Any such application, except by a governmental agency, must be accompanied
10 by the filing fee established in the master fee schedule adopted annually as part
11 of the village budget.

12
13 ~~(2) All applications concerning variances shall be upon forms to be supplied by~~
14 ~~the community development department.~~

15
16 ~~(3) Criteria for decisions on variance applications are provided in section 21-21 of~~
17 ~~the village code.~~

18
19 ~~(4) Public notice of all hearings shall be provided as required by section 21-3 of~~
20 ~~the village Code.~~

21
22 (2) Variance application process.
23

24 a. Generally. Upon receipt of an application for a variance, the
25 community development director shall schedule the variance for
26 review and processing. Variances shall be processed and noticed
27 pursuant to section 23-3.

28
29 b. Application requirements. Variance requests shall contain information
30 sufficient in detail to reasonably apprise the community development
31 director or his/her designee, and the planning, zoning and adjustment
32 board of the nature and substance of the proposed variance.
33 Variance requests shall be filed by written application to the
34 community development department. Each application shall be
35 accompanied by the applicable fee and shall contain the following
36 information or as otherwise required on the community development
37 department application submittal checklist:

38
39 1. A legal description of the subject property with a sealed land
40 survey prepared by a registered land surveyor.

41
42 2. A detailed description of the requested variance and a
43 justification statement detailing how the variance meets each of
44 the criteria set forth in subsection (3)b below.

45
46 3. Dimensioned plans showing the improvements that are the
47 subject of the variance request.

48
49 4. The person filing the application must be the property owner or
50 an agent of the property owner. Proof of ownership must be

1 provided. If the applicant is other than the owner of record, a
2 power of attorney from the owner of record to the applicant
3 shall accompany the application affirming that the owner has
4 granted full authority to the applicant to apply for the relief
5 requested in the application. If the applicant representing the
6 property owner is an attorney licensed to practice in this state,
7 no power of attorney shall be required; however, the attorney
8 shall sign the application and indicate his or her representative
9 capacity.

10
11 5. Copy of a list of property owners within five hundred (500) feet
12 of the subject property from the Palm Beach County Property
13 Appraiser's Office and stamped and addressed envelopes for
14 the surrounding property owners within five hundred (500) feet
15 of the subject property.

16
17 (3) Variance standards, notice, guidelines, and review criteria.

18
19 a. Burden of proof. The burden of demonstrating that the request meets
20 the variance review criteria shall be on the applicant.

21
22 b. Public notice. Public notice of the variance application shall be
23 provided as required by section 21-3 of the village code.

24
25 c. Review criteria. A variance is subject to the following criteria unless
26 otherwise specified in this chapter, and shall not be granted unless and
27 until the planning, zoning and adjustment board determines that:

28
29 1. That special conditions and circumstances exist which are
30 peculiar to the land, structure or building involved and which
31 are not applicable to other lands, structures or buildings in the
32 same zoning district;

33
34 2. That the special conditions and circumstances do not result
35 from the actions of the applicant;

36
37 3. That granting the variance requested will not confer on the
38 applicant any special privilege that is denied by the ordinance
39 to other lands, buildings, or structures in the same zoning
40 district;

41
42 4. That literal interpretation of the provisions of the subject
43 ordinance would deprive the applicant of rights commonly
44 enjoyed by other properties in the same zoning district under
45 the terms of the ordinance and would work unnecessary and
46 undue hardship on the applicant;

47
48 5. That the variance granted is the minimum variance that will
49 make possible the reasonable use of the land, building or
50 structure;

1
2 6. That the grant of the variance will be in harmony with the
3 general intent and purpose of the ordinance and that such
4 variance will not be injurious to the area involved or otherwise
5 detrimental to the public welfare.

6
7 d. *Conditions and safeguards.* In granting a variance, the planning,
8 zoning and adjustment board may prescribe appropriate conditions and
9 safeguards as are, in the board’s opinion, necessary to protect the public
10 interest. Violations of such conditions and safeguards, when made a
11 part of the terms under which the variance is granted, shall be deemed
12 a violation of this chapter.

13
14 e. *Use variances not authorized.* Under no circumstances, except as
15 expressly authorized, shall the planning, zoning and adjustment board
16 grant a variance to allow a use not permitted in the applicable zoning
17 district involved or any use expressly or by implication prohibited in
18 the zoning district by the terms of the code. No nonconforming use of
19 neighboring lands, structures or buildings in the same zoning district
20 and no permitted use of lands, structures or buildings in other zoning
21 districts shall be considered grounds for the authorization of a variance.

22
23 (4) *Expiration of variance.*

24
25 a. Unless otherwise set forth in the written order, the variance shall expire
26 one (1) year from the date of the planning, zoning and adjustment
27 board’s order granting the variance if a building permit, where required
28 by law, has not been issued in accordance with the plans and conditions
29 upon which the variance was granted; and

30
31 b. The variance shall expire if a building permit issued in accordance with
32 the plans and conditions upon which the variance was granted expires
33 and is not renewed pursuant to the applicable provisions regarding
34 renewal of building permits.

35
36 (5) *Decision and written order.* A concurring vote of four (4) of the seven (7)
37 board members shall be necessary to grant a variance. The planning, zoning
38 and adjustment board’s decision on a variance application shall be set forth in
39 a written order. An order granting a variance shall contain all appropriate
40 conditions and safeguards as determined by the board. The order shall be
41 forwarded to the village clerk and shall be sent to the applicant and/or the
42 applicant’s agent and shall become part of the public records.

43
44 (6) *Judicial review.* Any person or persons, jointly or severally, aggrieved by any
45 decision of the planning, zoning and adjustment board may seek judicial
46 review in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida
47 within thirty (30) days after rendition of the decision by the planning, zoning
48 and adjustment board. Such an appeal shall not be a hearing de novo, but shall
49 be limited to appellate review of the record created before the planning, zoning
50 and adjustment board.

* * *

Sec. 45-52. Administrative appeals.

(1) Review by the planning, zoning and adjustment board. The planning, zoning and adjustment board shall review and decide appeals from any person who has been adversely affected by a decision or order of an administrative official in the interpretation or application of the zoning code or any land development regulation. The planning, zoning and adjustment board may modify, reverse, or affirm the administrative official's decision or order interpreting or applying the provisions of the zoning code or any land development regulation.

(2) Filing. Administrative appeals shall be filed by written application using the form provided by the community development department. All applications shall be accompanied by the processing fee established by the village council and all supporting evidence pertaining to the appeal. All appeals shall be filed with the community development department within fifteen (15) days of the administrative decision, act, interpretation, or order to which the appeal is directed.

(3) Processing.

a. All applications for administrative appeals shall be scheduled for a hearing before the planning, zoning and adjustment board on the next available agenda.

b. The applicant or the applicant's agent or attorney shall present the appeal at a public hearing before the planning, zoning and adjustment board. The burden of demonstrating an error in such decision or order shall be on the applicant.

c. The administrative official whose decision or order is being challenged shall present evidence, through testimony, documents or otherwise, supporting in the initial decision or order.

d. The concurring vote of four (4) of the seven (7) board members shall be necessary to reverse any order, requirement, or decision of an administrative official.

e. Upon a decision, the planning, zoning and adjustment board shall issue a written order. The order shall be forwarded to the village clerk and shall be sent to the applicant and/or the applicant's agent and shall become part of the public records

(4) Judicial review. Any person or persons, jointly or severally, aggrieved by any decision of the planning, zoning and adjustment board may seek judicial review in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida within thirty (30) days after rendition of the decision by the planning, zoning and adjustment board. Such an appeal shall not be a hearing de novo, but shall

1 be limited to appellate review of the record created before the planning, zoning
2 and adjustment board.

3
4 (5) Stay of work and proceedings on appeal. An appeal to the planning, zoning
5 and adjustment board stays all work on the premises and all proceedings in
6 furtherance of the action appealed from, unless the official from whom the
7 appeal was taken shall certify to the planning, zoning and adjustment board
8 that, by reason of facts stated in the certificate, a stay would cause imminent
9 peril to life or property. In such case, proceedings or work shall not be stayed
10 except by order of the planning, zoning and adjustment board or by a court of
11 record on application, on notice to the officer from whom the appeal is taken
12 and on due cause shown.

13
14 Section 5. All other references to the Planning Commission or to the Board of Adjustment in the
15 Village Code of Ordinances, to the extent not specifically addressed in this Ordinances, shall be
16 changed to the Planning, Zoning and Adjustment Board.

17
18 Section 6. The provisions of this Ordinance shall become and be made a part of the Code of the
19 Village of North Palm Beach, Florida.

20
21 Section 7. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for
22 any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such
23 holding shall not affect the remainder of this Ordinance.

24
25 Section 8. All ordinances or parts of ordinances and resolutions or parts of resolutions in conflict
26 herewith are hereby repealed to the extent of such conflict.

27
28 Section 9. This Ordinance shall take effect immediately upon adoption.

29
30 PLACED ON FIRST READING THIS 28th DAY OF SEPTEMBER, 2023.

31
32 PLACED ON SECOND, FINAL READING AND PASSED THIS 12th DAY OF OCTOBER, 2023.

33
34
35 (Village Seal)

36 _____
37 MAYOR

38
39 ATTEST:

40
41 _____
42 VILLAGE CLERK

43
44 APPROVED AS TO FORM AND
45 LEGAL SUFFICIENCY:

46
47 _____
48 VILLAGE ATTORNEY

	COMMUNITY DEVELOPMENT DEPARTMENT REPORT AND RECOMMENDATION
---	---

Subject/Agenda Item:

ZTA-2023-001 Ordinance for PZAB Zoning Text Amendment

Consideration of Approval: A request from Village Staff to create a new Board called the Planning & Zoning Adjustment Board which will serve as the Planning Commission and Board of Appeals and to clarify and streamline the Variance process.

Recommendation to APPROVE

Recommendation to DENY

Quasi-Judicial

Legislative

Public Hearing

Originating Department: Planning & Zoning Project Manager _____ Caryn Gardner-Young, AICP	Reviewed By: Community Development Director _____ Caryn Gardner-Young, AICP
Village Council Action: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approve with conditions <input type="checkbox"/> Denial <input type="checkbox"/> Continued to: _____	Public Notice: <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required Dates: Paper: Sun Sentinel Mailing <input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required Notice Distance:

Attachments: <ul style="list-style-type: none">• PZAB Ordinance	
--	--

I. Executive Summary

Village of North Palm Beach (Village) Staff is proposing changes to Chapter 21 of the Village Code by amending Article II “Planning Commission” to create a new Planning & Zoning Adjustment Board, changes to Chapter 21 and 45 by amending Article III, Article IV and Sections 45-50 and 45-52 by deleting or amending language to provide for procedures for variances and replacing all Village Code references to the Planning Commission with the Planning & Zoning Adjustment Board.

II. Proposed Code Provision Modifications:

Please see attached Ordinance

III. Staff Analysis:

Background:

The Village’s Code of Ordinances created a Planning Commission which powers included:

- (1) Perform any duties which lawfully may be assigned to it by the village council.
- (2) Perform any other duties which may be assigned to it under this Code.
- (3) The planning commission of the village is hereby designated as the governmental entity to act as the "local planning agency" in accordance with chapter 163, Florida Statutes.
- (4) The planning commission shall serve as the village's board of adjustment to consider variances and administrative appeals.
- (5) The planning commission has additional duties that include site plan and appearance review (see sections [6-30](#) through [6-60](#)); the responsibility to make recommendations on special exceptions (see [section 45-16.2](#)); and the authority to approve waivers on land in the C-MU and C-NB zoning districts only (see [section 45-51](#)).

The Village’s Code of Ordinances also created a Board of Adjustment, whose duties are to hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any land development regulation and to authorize variances from the terms of the Code of Ordinances.

On March 19, 2019 the Village Council, through Ordinance 2019-01 approved a zoning text amendment which required the Planning Commission to assume the duties of the Board of Adjustment. However, the Ordinance never eliminated the Board of Adjustment. It has been four years since this change was made and the Planning Commission has successfully assumed all the duties and responsibilities of the Board of Adjustment.

Village Staff is proposing to formally eliminate the Board of Adjustment and fully incorporate its duties in the newly created Planning & Zoning Adjustment Board. The proposed amendment will continue the process to streamline development issues for both residents and developers. Combining the boards together provides more efficiency which will only improve with the elimination of the Board of Adjustment. Additionally, providing a more appropriate name to the new board will avoid any confusion regarding the development process within the Village. There are no proposed changes to the functions, duties or responsibilities of the Planning Commission.

As for the variance process, Village Staff is proposing several changes which are summarized as follows:

1. Format – the proposed amendments will move all relevant provisions to one location so the applicant does not have to look at several code provisions to find out what is needed for a variance;
2. Process – the proposed amendments will streamline the development process and provide a clear application process so the applicant knows what to include with the application to avoid multiple submittals;
3. Burden of Proof – the proposed amendments will add a burden of proof so the applicant knows he/she/they have to show their request meets the variance requirements;
4. Expiration – the proposed amendments will add an expiration of the variance within one (1) year if a building permit has not been issued or if the permit expires to prevent a variance from lingering;
5. Administrative Appeals – the proposed amendments will streamline the appeal process by including what is required for the application, defining what powers the new Board has, delineating the burden of proof needed and requiring that appeals be filed within 15 days from the administrative decision or order.

Analysis:

Consistency with the Comprehensive Plan

Future Land Use Element

Objective 6 states that the Village shall encourage infill development and redevelopment along the Northlake Blvd and U.S. Highway No. 1 corridor. By streamlining processes, developers may be more willing to consider redevelopment within the Village's municipal boundaries.

Housing Element

Policy 3.9 states that the Village shall maintain land development regulations and permit review processes related thereto for the purpose of eliminating excessive requirements and supplementing existing requirements in order to increase private sector participation in meeting defined housing needs. By streamlining processes, developers may be more willing to consider redevelopment within the Village's municipal boundaries.

Consistency with the Code of Ordinances

The Department of Community Development Planning Division is responsible for updating the Village's land development regulations and to assist village administration with development or redevelopment planning concepts. The proposed text amendments are to promote the economic health of the village and ensure the Department's operations are efficient and effective and to streamline the zoning relief procedures in a manner that would offer the public a continued opportunity to engage with the Village. Thus, the proposed text amendments and their effects are consistent with the overall Code of Ordinances, insofar as no proposed amendment directly conflicts with or otherwise hinders the implementation or enforcement of other standards currently embedded in the Code of Ordinances that are not subject to this amendment. The proposed amendments further the goals of the Village Council.

IV. Staff Recommendation:

Adoption of Ordinance

PLANNING COMMISSION ACTION–September 12, 2023

On a Motion by Board Member Hogarth and a second by Board Member Kennedy the Planning Commission approved the Ordinance as presented with the elimination of an Administrative Variance process.

VILLAGE COUNCIL ACTION– September 28, 2023

On Motion by Village Councilmember Mullinix and seconded by Council member Searcy, the Village Council voted unanimously (4-0) to approve the Ordinance as presented by staff.

VILLAGE COUNCIL ACTION– October 12, 2023

VILLAGE OF NORTH PALM BEACH
VILLAGE ATTORNEY'S OFFICE

TO: Honorable Mayor and Council

THRU: Chuck Huff, Village Manager

FROM: Leonard G. Rubin, Village Attorney

DATE: October 12, 2023

SUBJECT: **ORDINANCE 2nd Reading** – Changing the date of the March 2024 Election to coincide with the Presidential Preference Primary and providing for an additional Qualifying Period

The Palm Beach County Supervisor of Elections has advised the Village that the County voting system will not be available for the March 12, 2024 general election because March 19, 2024 has been established as the date for the statewide Presidential Preference Primary. Consequently, in order to utilize both the County voting system and the services of the Supervisor of Elections, the Village is required to move the date of its election to coincide with the Presidential Preference Primary as authorized by Section 101.75(3), Florida Statutes. To that end, the attached Ordinance:

- Establishes March 19, 2024 as the date of the Village's general election (with a runoff election, if required, on April 2, 2024).
- Provides for candidate qualifying from November 21, 2023 through November 28, 2023 (as set forth in Section 10-5 of the Village Code).

Due to concerns that elected officials may resign prior to the end of the calendar year (but after the qualifying period) due to the new financial disclosure requirements imposed by state law, the Supervisor of Elections has agreed to allow municipalities with vacancies caused by such resignations to reopen qualifying in January, with ballot language submitted by noon on January 12, 2024. This would apply if a Councilmember resigned from a seat that was not already scheduled to be filled at the March 2024 general election. To that end, the Ordinance provides for an additional qualifying period during regular business hours from January 4, 2024 through January 11, 2024.

There is no fiscal impact.

The attached Ordinance has been drafted by this office and reviewed for legal sufficiency.

At its September 28, 2023 regular meeting, the Village Council adopted the Ordinance on first reading without modification. Please note, however, that language was added to allow candidates to qualify during the additional qualifying period in the event all candidates for a particular seat withdraw after the close of the initial qualifying.

Recommendation:

Village Staff requests Village Council consideration and approval on second and final reading of the attached Ordinance changing the date of the March 2024 general election to March 19, 2024 and providing for an additional qualifying period for vacancies due to resignations in accordance with Village policies and procedures.

ORDINANCE 2023-_____

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, CHANGING THE DATE OF THE MARCH 2024 GENERAL ELECTION TO COINCIDE WITH THE STATEWIDE PRESIDENTIAL PREFERENCE PRIMARY; ESTABLISHING THE DATES FOR QUALIFICATION OF CANDIDATES; PROVIDING FOR COMMENCEMENT AND LENGTH OF TERM OF OFFICE; PROVIDING FOR AN ADDITIONAL QUALIFYING PERIOD FOR VACANCIES ARISING AFTER INITIAL QUALIFYING PERIOD; PROVIDING FOR TRANSMITTAL TO THE SUPERVISOR OF ELECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Palm Beach County Supervisor of Elections has advised the Village that the County voting system will not be available for the March 12, 2024 general election because the Florida Legislature has established March 19, 2024 as the date for the Presidential Preference Primary; and

WHEREAS, in order to utilize the County voting system and the services of the County Supervisor of Elections, the Village is required to move the date of its election to coincide with the Presidential Preference Primary; and

WHEREAS, Section 101.75(3), Florida Statutes, provides that the governing body of a municipality may, by ordinance, move the date of any municipal election to a date concurrent with any statewide or countywide election; and

WHEREAS, Section 101.75(3), Florida Statutes, further requires that an ordinance moving the date of a municipal election specifically provide the candidate qualifying dates for the election; and

WHEREAS, due to recent changes regarding financial disclosure requirements for municipal elected officials, the Supervisor of Elections has authorized an additional qualifying period for any additional open seat that may arise after the initial qualifying period has ended; and

WHEREAS, the Village Council determines that the adoption of this Ordinance is in the interests of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA as follows:

Section 1. The foregoing recitals are hereby ratified and incorporated herein.

Section 2. The Village Council hereby establishes Tuesday, March 19, 2024 as the date of the Village's general municipal election for 2024. A runoff election, if required, shall be held on April 2, 2024. Any qualified elector may become a candidate for any office to be filled at the March 2024

1 general election by paying the applicable qualifying fee and filing with the Village Clerk during regular
2 business hours from November 21, 2023 through November 28, 2023. The term of office for
3 candidates elected at the March 2024 general election shall commence as set forth in Article III,
4 Section 2 of the Village Charter.

5
6 Section 3. In the event of an additional open seat on the Village Council due to the resignation
7 of a seated Councilmember not up for reelection in 2024 after the close of the qualifying period
8 set forth in Section 2 but prior to the end of the calendar year or in the event all persons who
9 qualified for a particular seat withdraw leaving no candidate, the Village shall reopen the
10 qualifying period. Any qualified elector may become a candidate for such seat by paying the
11 applicable qualifying fee and filing with the Village Clerk during regular business hours from
12 January 4, 2024 through January 11, 2024.

13
14 Section 4. Upon adoption, the Village Council directs the Village Clerk to provide a copy of
15 this Ordinance to the County Supervisor of Elections.

16
17 Section 5. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for
18 any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void,
19 such holding shall not affect the remainder of this Ordinance.

20
21 Section 6. All ordinances or parts of ordinances or resolutions or parts of resolutions in
22 conflict herewith are hereby repealed to the extent of such conflict.

23
24 Section 7. This Ordinance shall take effect immediately upon adoption.

25
26 PLACED ON FIRST READING THIS ____ DAY OF _____, 2023.

27
28 PLACED ON SECOND, FINAL READING AND PASSED THIS ____ DAY OF _____,
29 2023.

30
31
32 (Village Seal)

MAYOR

33
34
35 ATTEST:

36
37 _____
38 VILLAGE CLERK

39
40
41 APPROVED AS TO FORM AND
42 LEGAL SUFFICIENCY:

43
44 _____
45 VILLAGE ATTORNEY

**VILLAGE OF NORTH PALM BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Honorable Mayor and Council

THRU: Chuck Huff, Village Manager

FROM: Caryn Gardner-Young, Community Development Director

DATE: October 12, 2023

SUBJECT: **RESOLUTION** – Approving a minor amendment to the Memory Care Commercial Planned Unit Development for the installation of a pass-through window consisting of a three-panel glass pane garage door on the north side of the commercial outparcel building.

Background

Approved in 2017, the subject 6,000 square foot building reserved for restaurant/retail/office use lies within the commercial outparcel within the previously approved Commercial PUD (CPUD) in conjunction with the adjacent 37,404 square foot Memory Care facility. Construction of the subject building has been finalized in 2022, however, all applicable permits have been applied for in preparation of future tenant Desano Pizzeria to occupy the northern most tenant space. A series of five (5) waivers have been approved by Village Council as part of the final CPUD approval, which are as follows:

- A. A waiver from Section 27- 64 of the Village Code of Ordinances to eliminate trees required for the north buffer spaced at one (1) for every seventy- five (75) lineal feet of landscape buffer. No trees shall be planted within the north landscape buffer adjacent to the courtyard (spacing requirements will be modified as depicted on the Landscape Plan).
- B. A waiver from Section 45- 32(E)7 of the Village Code of Ordinances to provide a total of seventy- eight (78) parking spaces where one hundred and fifty (150) parking spaces are required.
- C. A waiver from Section 45- 36(D) of the Village Code of Ordinances to provide for a wall eight (8) feet in height adjacent to the outdoor courtyard. The Code limits the height of walls and fences to six (6) feet.
- D. A waiver from Section 45- 32(D) of the Village Code of Ordinances to allow for a front setback of ten (10) feet for placement of the commercial outparcel building. The Code requires a front setback of fifty (50) feet.

Pursuant to Ordinance No. 2017-07, The Village Council may approve minor modifications to the CPUD by resolution without the necessity of review by the Planning Commission. It should be noted that this request meets all applicable standards set forth in this ordinance to be deemed a minor modification.

The subject +/-0.27-acre parcel is located on the west side of US Highway 1, south of Lighthouse Drive and north of Ebbtide Drive. The subject parcel is within the C-MU (Commercial Mixed-Use District) pursuant to the Village Zoning map and C (Commercial) Future Land Use designation pursuant to the Village Future Land Use map. The property address is 635 U.S. Highway One, North Palm Beach, FL 33408.

The applicant is proposing to add an indoor and outdoor bar area within the north façade for a six seat outdoor seating area. This requires the applicant to open up the wall to include a pass-through window.

Legal Review

The attached Resolution has been prepared/reviewed by the Village Attorney for legal sufficiency.

Fiscal Impacts

N/A

Recommendation:

Village Staff recommends Village Council consideration and approval of the attached Resolution.

RESOLUTION 2023-____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA APPROVING A MINOR AMENDMENT TO THE MEMORY CARE COMMERCIAL PLANNED UNIT DEVELOPMENT FOR THE INSTALLATION OF A PASS-THROUGH WINDOW CONSISTING OF A THREE PANEL GLASS PANE GARAGE DOOR ON THE NORTH SIDE OF THE COMMERCIAL OUTPARCEL BUILDING; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, through the enactment of Ordinance No. 2017-07 on June 22, 2017 (“PUD Ordinance”), the Village Council approved a Commercial Planned Unit Development on the west side of U.S. Highway One north of Ebbtide Drive and south of Lighthouse Drive known as the Memory Care PUD (“PUD”); and

WHEREAS, Section 7 of the PUD Ordinance provides that the Village Council may approve minor modifications to the PUD by resolution without the necessity of review by the Planning Commission, advertisement, or public hearing; and

WHEREAS, the property owner, ASL NPB, LLC, and the applicant, Desano – North Palm Beach LLC, are requesting a modification to the 6,000 square foot commercial outparcel building to install a three-panel glass pane garage door within the proposed pass-through window on the north side of the building with a fixed countertop to accommodate outdoor seating during business hours; and

WHEREAS, the Village Council determines that the request meets the definition of a minor amendment to the PUD and that the adoption of this Resolution is in the best interests of the Village and its residents.

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

Section 1. The foregoing recitals are ratified as true and incorporated herein.

Section 2. As authorized by Section 7 of Ordinance No. 2017-07, the Village Council hereby approves a minor modification to the Memory Care Commercial Planned Unit Development to allow the installation of a three-panel glass pane garage door within the proposed pass-through window on the north side commercial outparcel building with a fixed countertop. The improvements shall be constructed in accordance with the following plans:

- A. Elevations created by Cotleur & Hearing dated September 8, 2023;
- B. Site Plan created by Urban Design Studios dated September 8, 2023; and
- C. Clopay Garage Door pictures dated August 31, 2023 (P1 to P4).

The outdoor bar seating area shall be limited to six (6) seats. Any violation of this approval shall be subject to enforcement pursuant to Section 6 of the PUD Ordinance.

Section 3. To the extent not expressly modified herein, all other elements of the approved PUD, as previously amended, shall remain in full force and effect.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2023.

(Village Seal)

MAYOR

ATTEST:

VILLAGE CLERK



Subject/Agenda Item:

PUD-2023-004 635 US Highway 1

Consideration of Approval: A request from the property owner, ASL NPB, LLC, and the lessee, Desano – North Palm Beach, LLC, for a minor modification to an existing Commercial Planned Unit Development (PUD) to install a pass-through window consisting of a rolling three panel glass pane garage door and countertop within the north façade to accommodate an indoor and 6 seat outdoor seating area at 635 U.S. Highway One.

Recommendation to APPROVE

Recommendation to DENY

Quasi-Judicial

Legislative

Public Hearing

Originating Department: Planning & Zoning Project Manager _____ Caryn Gardner-Young, AICP	Reviewed By: Community Development Director _____ Caryn Gardner-Young, AICP
Attachments: <ul style="list-style-type: none">• Elevations created by Cotleur & Hearing and dated 9/8/23• Site Plan created by Urban Design Kilday Studios and dated 9/8/23• Clopay Garage Door pictures dated 8/31/23 (P1-4)	Public Notice: <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required Dates: Paper: Mailing <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required Notice Distance: _ 500'

I. Executive Summary

The applicant is proposing to add an indoor and outdoor bar area within the north façade for a six seat outdoor seating area. This requires the applicant to open up the wall to include a pass-through window.

II. Site Data

Existing Use:	Vacant
Parcel Control Numbers:	68-43-42-16-34-002-0000
Legal Description:	POETS WALK MEMORY CARE TR B K/A FUTURE DEVELOPMENT
Parcel Size:	.27 acres
Existing Future Land Use Designation:	Commercial
Existing Zoning District:	Commercial – Mixed Use (C-MU)

Table 1: Surrounding Existing Land Use, Future Land Use, Zoning District:			
Direction	Existing Land Use	Future Land Use	Zoning District
<i>North</i>	Memory Care	Commercial	Commercial – Mixed Use (C-MU)
<i>South</i>	Atrium Office Condominium	Commercial	Commercial – Mixed Use (C-MU)
<i>East</i>	North Cove Office Building	Commercial	Commercial – Mixed Use (C-MU)
<i>West</i>	Memory Care	Commercial	Commercial – Mixed Use (C-MU)

III. Background

Approved in 2017, the subject 6,000 square foot building reserved for restaurant/retail/office use lies within the commercial outparcel within the previously approved Commercial PUD (CPUD) in conjunction with the adjacent 37,404 square foot Memory Care facility. Construction of the subject building was completed in 2022; however, all applicable permits have been applied for in preparation of future tenant Desano Pizzeria occupying the northernmost tenant space. A series of five (5) waivers were approved by the Village Council as part of the final CPUD approval, which are as follows:

A. A waiver from Section 27- 64 of the Village Code of Ordinances to eliminate trees required for the north buffer spaced at one (1) for every seventy- five (75) lineal feet of landscape buffer. No trees shall be planted within the north landscape buffer adjacent to the courtyard (spacing requirements will be modified as depicted on the Landscape Plan).

B. A waiver from Section 45- 32(E)7 of the Village Code of Ordinances to provide a total of seventy- eight (78) parking spaces where one hundred and fifty (150) parking spaces are required.

C. A waiver from Section 45- 36(D) of the Village Code of Ordinances to provide for a wall eight (8) feet in height adjacent to the outdoor courtyard. The Code limits the height of walls and fences to six (6) feet.

D. A waiver from Section 45- 32(D) of the Village Code of Ordinances to allow for a front setback of ten (10) feet for placement of the commercial outparcel building. The Code requires a front setback of fifty (50) feet.

Pursuant to Ordinance No. 2017-07, The Village Council may approve minor modifications to the CPUD by resolution without the necessity of review by the Planning Commission. It should be noted that this request meets all applicable standards set forth in the Ordinance to be deemed a minor modification.

The subject +/-0.27-acre parcel is located on the west side of U.S. Highway One, south of Lighthouse Drive and north of Ebbtide Drive. The subject parcel is within the C-MU (Commercial Mixed-Use Zoning District) pursuant to the Village Zoning map and the C (Commercial) Future Land Use designation pursuant to the Village Future Land Use map. The property address is 635 U.S. Highway One, North Palm Beach, FL 33408.

IV. Applicable Code Provisions:

Section 45.35-1 Planned Unit Development Section IV Criteria for Appearance D. Building Design

V. Summary of Proposed Site Plan and Appearance Details:

The petitioner's Planned Unit Development Amendment documents consists of:

1. Elevations created by Cotleur & Hearing and dated 9/8/23
2. Site Plan created by Urban Design Kilday Studios and dated 9/8/23
3. Clopay Garage Door pictures dated 8/31/23 (P1-4)

VI. Staff Analysis:

The petition is for Planned Unit Development Amendment approval to add an indoor and outdoor bar area within the north façade including a six seat outdoor seating area.

Standards and Staff Findings:

Section 45.35-1 Planned Unit Development

1. Harmony:

The proposed use or uses shall be of such location, size and character as to be in harmony with the appropriate and orderly development of the zoning district in which situated and shall not be detrimental to the orderly development of adjacent zoning districts. **The applicant is not proposing a new use but improving an existing use by**

adding an indoor and outdoor bar area. The original approval of the site included an outdoor seating area which is not being affected; consequently, the proposed use is in harmony with the existing approvals and the zoning district.

2. Traffic/Neighborhood Impacts:

The location and size of the proposed use or uses, the nature and intensity of the principal use and all accessory uses, the site layout and its relation to streets giving access to it, shall be such that traffic to and from the use or uses, and the assembly of persons in connection therewith, will not be hazardous or inconvenient to the neighborhood nor conflict with the normal traffic of the neighborhood. **The applicant is not proposing a new use but improving an existing use by adding an indoor and outdoor bar area. The original approval of the site included an outdoor seating area so it was expected that an assembly of persons would occur. The area will be buffered and will not conflict with the neighborhood or traffic.**

2. Building Modifications:

The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping of the site shall be such that they will not hinder or discourage the proper development and use of adjacent land and buildings nor impair the value thereof. **The applicant is not proposing adding walls, additional height to any building or a fence except as previously approved. Landscaping was approved through the original PUD approval so the outdoor seating area was taken into consideration. The proposed modification will not hinder or discourage the proper development or use of adjacent land and buildings nor impair the value.**

2. Density/Open Space:

The standards of density and required open space in the proposed project are at least equal to those required by this ordinance in

the zoning district in which the proposed project is to be located, except as may be permitted for key redevelopment sites through subsection 45-35.1.VIII. **The applicant is not impacting density or open space.**

2. Proposed Uses:

There shall be no uses within the proposed project which are not permitted uses in the zoning district in which the proposed project is to be located. **The applicant is not proposing any changes to the original use, and restaurants are permitted in a C-MU Zoning District.**

Section IV Criteria for Appearance D. Building Design

1. Building Design:

Building colors shall be harmonious, with bright or brilliant colors used only for accent. **The applicant will be using the same existing building and window colors for the proposed work.**

2. Building Design:

Materials shall be selected for suitability to the type of buildings and have the same materials, or those which are architecturally harmonious, used for all building walls and other exteriors building components wholly or partly visible from the public ways and adjoining properties. **The materials used will be suitable for their use since they will be the same existing building materials.**

VII. Staff Recommendation:

Approval of SP-2023-0617 with the following conditions:

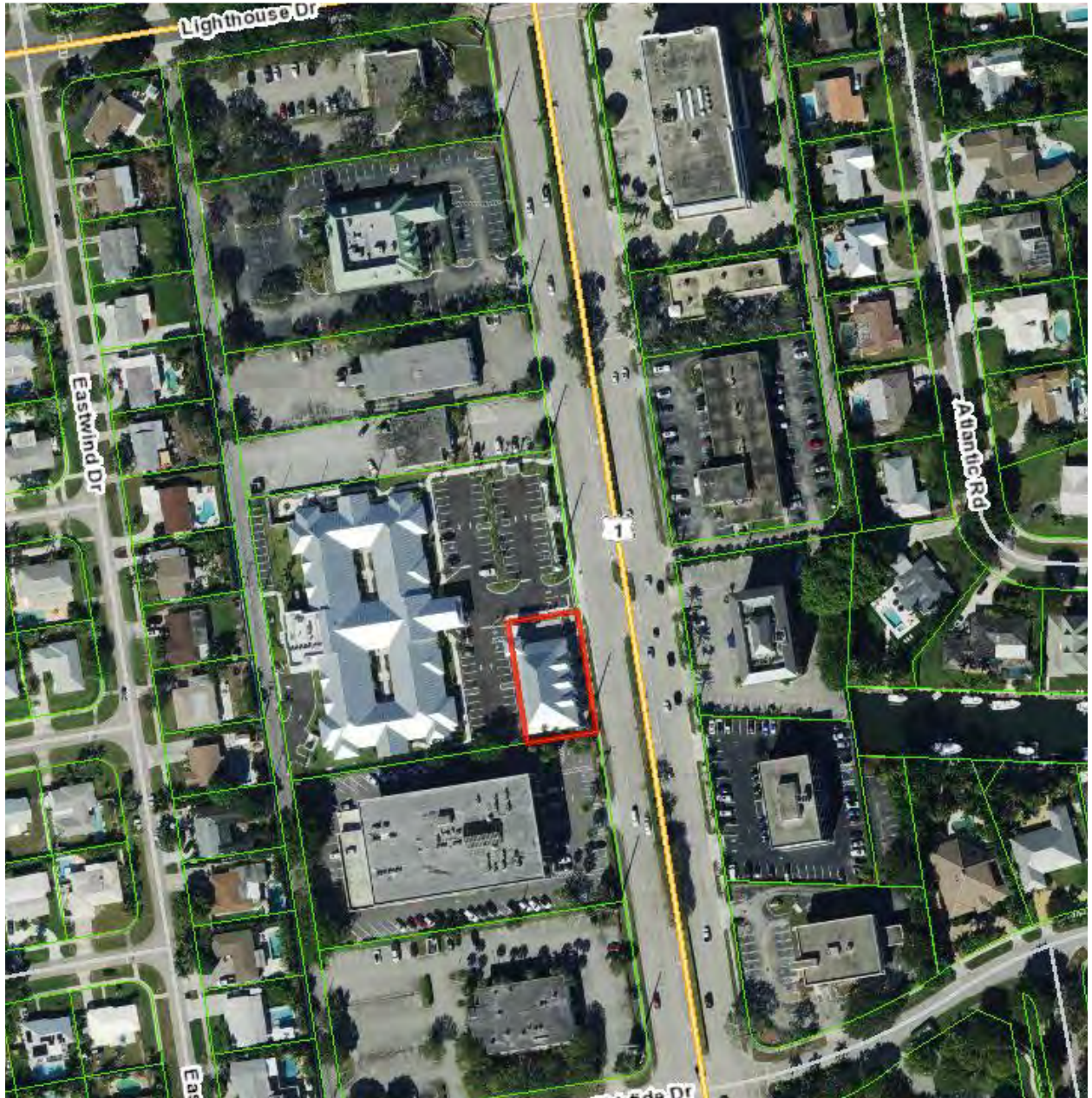
1. The most stringent requirements of Exhibit “A” Community Development Department Report and Recommendation dated September 20, 2023, and strict compliance with the Exhibits listed below, which are attached hereto and made part hereof as Exhibit “B”
 - a. Elevations created by Cotleur & Hearing and dated 9/8/23
 - b. Site Plan created by Urban Design Kilday Studios and dated 9/8/23
 - c. Clopay Garage Door pictures dated 8/31/23 (P1-4)

2. The applicant is limited to only six (6) seats located in the outdoor bar seating area.
3. The site plan shall be revised as necessary to reflect all conditions of approval and re-submitted prior to the issuance of building permits. (Planning and Zoning)
4. Non-compliance with any of the conditions of approval will result in withholding of the issuance of building permits or a Certificate of Occupancy. (Planning and Building)
5. All advertisements and legal addresses on insurance policies and business correspondence shall clearly state that the project is located within the “Village of North Palm Beach”. (Planning and Zoning)

VILLAGE COUNCIL ACTION– October 12, 2023

Exhibit B

Location Map



VILLAGE OF NORTH PALM BEACH
Country Club

TO: Honorable Mayor and Council

THRU: Chuck Huff, Village Manager

FROM: Beth Davis, CCM General Manager

DATE: October 12, 2023

SUBJECT: **RESOLUTION** – Accepting a proposal from Daniels Fence Corp. to Install New Fencing at the NPBCC Tennis Center pursuant to pricing established in an existing Martin County Contract and authorizing execution of Contract RFB2023-3516.

Background:

NPBCC Tennis Center Fencing is 25+ years of age and structurally obsolete. All of the main support posts have rusted throughout causing the top and bottom rails to sag which results in rails and mesh impeding on the court surface, which has a negative effect on drainage. Staff has had several vendors out to inspect the fencing and all have recommended replacement due to age and failure of the fence posts, rails, mesh, braces and gates.

Daniels Fence Corp. has presented a proposal to replace and install new fencing around the tennis courts of the NPBCC Tennis Center. The proposed purchase, removal and disposal of existing fence, and installation of new fence and gates, carries a total cost of \$235,890

Pricing:

The proposal from Daniels Fence Corp. is pursuant to pricing established in an existing contract with Martin County (Contract No. RFB-2023-3516), expiring August 22, 2026. The Village's purchasing policies and procedures authorize concurrent competitive purchasing on other state and local government contracts. Two additional quotes were obtained from qualified vendors to verify "fair market value" as required by the Village's purchasing policies and procedures. While the other quotes were lower in cost, one excluded the removal and disposal costs of the existing fence and gates from their proposals and the other charged administration fees. Daniels Fence, Corp., has an excellent reputation and Staff believes that they are the superior choice for the Village's fencing needs at the NPBCC Tennis Center.

Funding:

Staff is seeking to utilize funds from L8050-66210 (Tennis Construction & Major Renovation) to purchase and install a new tennis fencing system in accordance with Village policies and procedures. \$150,000 was transferred from the Village Special Projects fund to the country club for this project. A budget amendment will be prepared at year-end if necessary for additional expenses incurred.

Account Information:

Fund	Department	Account Number	Account Description	Amount
Enterprise Fund	Country Club Tennis	L8050-66210	Construction & Major Renovation	\$235,890

The attached Resolution and Contract have been prepared and/or reviewed for legal sufficiency by the Village Attorney.

Recommendation:

Village Staff requests Council consideration and approval of the attached Resolution Accepting a proposal from Daniels Fence Corp. to install new fencing around the NPBCC Tennis Courts utilizing pricing established in an existing Martin County Contract at a total cost not to exceed \$235,890, with funds expended from Account Number L8050-66210 (Tennis – Construction & Major Renovations), and authorizing the Mayor and Village Clerk to execute a Contract for such services in accordance with Village policies and procedures.

RESOLUTION 2023-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA ACCEPTING A PROPOSAL FROM DANIELS FENCE CORP FOR THE REMOVAL, DISPOSAL AND REPLACEMENT OF FENCING AT THE NORTH PALM BEACH COUNTRY CLUB TENNIS CENTER PURSUANT TO PRICING ESTABLISHED IN AN EXISTING MARTIN COUNTY AGREEMENT AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A CONTRACT FOR SUCH SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the tennis court fencing at the North Palm Beach Country Club Tennis Center is in need of replacement; and

WHEREAS, Village Staff recommended that a Contract be awarded to Daniels Fence Corp pursuant to pricing established in an existing Agreement for Countywide Fencing with Martin County (RFB2023-3516); and

WHEREAS, the Village Council determines that the adoption of this Resolution, including the waiver of any conflicting purchasing policies and procedures, is in the best interests of the citizens and residents of the Village of North Palm Beach.

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

Section 1. The foregoing recitals are ratified as true and incorporated herein.

Section 2. The Village Council hereby approves a Contract with Daniels Fence Corp for the removal and disposal of existing fencing and the installation of new fencing at the North Palm Beach Country Club Tennis Center pursuant to pricing established in an existing Agreement for Countywide Fencing with Martin County (RFB2023-3516) and authorizes the Mayor and Village Clerk to execute the Contract on behalf of the Village, a copy of which is attached hereto and incorporated herein. The total cost of this Contract shall not exceed \$235,890.00, with funds expended from Account No. L8050-66210 (Tennis – Construction and Major Renovation).

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2023.

(Village Seal)

MAYOR

ATTEST:

VILLAGE CLERK

CONTRACT

This Contract is made as of this _____ day of _____, 2023, by and between the VILLAGE OF NORTH PALM BEACH, 501 U.S. Highway One, North Palm Beach, Florida 33408, a Florida municipal corporation (hereinafter “VILLAGE”), and DANIELS FENCE CORP, a Florida corporation (hereinafter “CONTRACTOR”).

RECITALS

WHEREAS, the VILLAGE is in need of a contractor to remove and dispose of the existing fencing at the North Palm Beach Country Club Tennis Center and install new fencing and gates; and

WHEREAS, Martin County, through its competitive selection process, awarded an Agreement for Countywide Fencing (RFB2023-3516) (“Martin County Agreement”) to CONTRACTOR; and

WHEREAS, the VILLAGE requested that CONTRACTOR provide the requested services based on the pricing established in the Martin County Agreement; and

WHEREAS, as authorized by the VILLAGE’s purchasing policies and procedures, the VILLAGE desires to retain CONTRACTOR’s services by “piggy-backing” the Martin County Agreement, including all terms, conditions and pricing set forth therein.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. Martin County Agreement. The Martin County Agreement for Countywide Fencing (RFB2023-3516) (“Martin County Agreement”) with CONTRACTOR, attached hereto as Exhibit “A,” is incorporated herein by reference.
3. CONTRACTOR’s Services and Time of Completion.
 - A. In accordance with the terms and conditions of the Martin County Agreement and at the direction of the VILLAGE, CONTRACTOR shall perform the services in accordance with its Proposal dated September 22, 2023, a copy of which is attached hereto as Exhibit “B” and incorporated herein by reference.
 - B. The total cost of such services shall not exceed **Two hundred thirty-five thousand eight hundred ninety dollars and no cents (\$235.890.00).**
 - C. The services to be provided by CONTRACTOR shall be commenced subsequent to the execution and approval of this Contract by the VILLAGE and upon written notice from the VILLAGE to CONTRACTOR to proceed and shall be completed within **one hundred and twenty (120) days** of the VILLAGE’s issuance of the notice to proceed.

4. Conflict of Terms and Conditions. Conflicts between documents shall be resolved in the following order of precedence:

- A. This Contract
- B. Exhibit "A" (Martin County Agreement)
- C. Exhibit "B" (CONTRACTOR's Proposal)

5. Compensation to CONTRACTOR. Payments by the VILLAGE to CONTRACTOR under this Contract shall not exceed the amount of compensation stated in Section 3(B) above without prior written consent of the VILLAGE. CONTRACTOR shall submit invoices to the VILLAGE for review and approval by the VILLAGE's representative, indicating that goods and services have been provided and rendered in conformity with this Contract, and they then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the VILLAGE representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Contract. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on CONTRACTOR's final/last billing to the VILLAGE. This certifies that all goods and services have been properly performed and all charges have been invoiced to the VILLAGE. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by CONTRACTOR. The VILLAGE will not be liable for any invoice from CONTRACTOR submitted thirty (30) days after the provision of all goods and services.

6. Term and Termination.

A. This Contract shall be for the term as indicated in the Martin County Agreement. Extensions or renewals to the Martin County Agreement or any modification including new products, terms, or price changes to the Martin County Agreement shall be submitted by CONTRACTOR to the VILLAGE for approval. In the event the Martin County Contract expires and no new contract is let by Martin County, the VILLAGE reserves the right, upon written agreement with CONTRACTOR to renew this Contract under the same terms and conditions for an additional period of one (1) year.

B. This Contract may be terminated by the VILLAGE, with or without cause, upon providing ten (10) days' notice to CONTRACTOR. This Contract may be terminated by CONTRACTOR upon providing thirty (30) days' notice to the VILLAGE. Upon any such termination, CONTRACTOR waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits. Unless CONTRACTOR is in breach of this Contract, the VILLAGE shall pay CONTRACTOR for work performed and accepted through the date of termination.

7. Insurance. CONTRACTOR shall obtain and maintain during the term of this Contract all insurance required under the Martin County Agreement, with the VILLAGE named as an additional insured.

8. Indemnification.

A. To the fullest extent permitted by applicable laws and regulations, CONTRACTOR shall indemnify and save harmless and defend the VILLAGE, its officials, agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action arising out of or in any

way related to the services furnished by CONTRACTOR pursuant to this Contract, including, but not limited to, those caused by or arising out of any act, omission, negligence or default of CONTRACTOR and/or its subcontractors, agents, servants or employees.

B. CONTRACTOR shall not be required to indemnify the VILLAGE, its officials, agents, servants and employees when the occurrence results solely from the wrongful acts or omissions of the VILLAGE, its officials, agents, servants and employees. The terms of this Section shall survive completion of all services, obligations and duties provided for in this Contract as well as the termination of this Agreement for any reason.

C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the VILLAGE or CONTRACTOR, nor shall this Contract be construed a waiver of sovereign immunity beyond the limited waiver provided in § 768.28, Florida Statutes.

9. Compliance with all Laws, Regulations and Ordinances. In performing the services contemplated by this Contract, CONTRACTOR shall obtain all required permits (if any) and comply with all applicable federal, state and local laws, regulations and ordinances, including, but by no means limited to, all requirements of the Village Code and the Florida Building Code.

10. Warranty/Guaranty. Unless a longer period is stated in the Martin County Agreement, CONTRACTOR warrants that its goods and services provided under this Contract will be free of defects in materials and workmanship for a period of one (1) year following delivery and completion of those goods and services.

11. Access/Audits. CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing services pursuant to this Contract for at least five (5) years after termination of this Contract. The VILLAGE shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at CONTRACTOR's place of business. Under no circumstances will CONTRACTOR be required to disclose any confidential or proprietary information regarding its products and service costs.

12. Payment and Performance Bond. As required by Section 255.05(1), Florida Statutes, CONTRACTOR shall record in the public records a statutory payment and performance bond prior to commencing the work.

13. Miscellaneous Provisions.

A. Failure of a party to enforce or exercise any of its right(s) under this Contract shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

B. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. The parties

knowingly, voluntarily and intentionally waive any right they may have to trial by jury with respect to any litigation arising out of or in connection with this Contract.

C. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

D. If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

E. All notices required in this Contract shall be sent by certified mail, return receipt requested, and sent to the addresses appearing on the first page of this Contract.

F. The VILLAGE and CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

G. CONTRACTOR warrants and represents that CONTRACTOR and all subcontractors are in compliance with Section 448.095, Florida Statutes, as may be amended. CONTRACTOR has registered to use, and shall continue to use, the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of newly hired employees and has received an affidavit from each subcontractor stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. If the VILLAGE has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, the VILLAGE shall terminate this Contract pursuant to Section 448.095(2), Florida Statutes, as may be amended. If the VILLAGE has a good faith believe that a subcontractor has knowingly violated Section 448.09(1), Florida Statutes, but CONTRACTOR has otherwise complained, it shall notify CONTRACTOR, and CONTRACTOR shall immediately terminate its contract with the subcontractor.

H. 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (561) 841-3355; NPBCLERK@VILLAGE-NPB.ORG; OR 501 U.S. HIGHWAY ONE, NORTH PALM BEACH, FL 33408.

In performing services pursuant to this Contract, CONTRACTOR shall comply with all relevant provisions of Chapter 119, Florida Statutes. As required by Section 119.0701, Florida Statutes, CONTRACTOR shall:

1. Keep and maintain public requires required by the VILLAGE to perform the service.
2. Upon request from the VILLAGE's custodian of public records, provide the VILLAGE with a copy 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 in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. 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 Contract term and following completion of the Contract if the CONTRACTOR does not transfer the records to the VILLAGE.
4. Upon completion of the Contract, transfer, at no cost, to the VILLAGE all public records in possession of CONTRACTOR or keep and maintain public records required by the VILLAGE to perform the services. If CONTRACTOR transfers all public records to the VILLAGE upon completion of the Contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the VILLAGE, upon request from the VILLAGE's custodian of public records, in a format that is compatible with the information technology systems of the VILLAGE.

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

IN WITNESS WHEREOF, the VILLAGE and CONTRACTOR hereto have made and executed this Contract as of the day and year first above written.

DANIELS FENCE CORP

By: _____

Print Name: _____

Position: _____

VILLAGE OF NORTH PALM BEACH

By: _____
DAVID NORRIS
MAYOR

ATTEST:

BY: _____
VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
VILLAGE ATTORNEY



**All Types and Styles • Commercial • Residential • Electric Gate Systems
Licensed • Bonded • Insured**

September 22, 2023

Proposal
North Palm Beach
Attn: Beth Davis

Project Name: Tennis Court Replacement - Sleeved Post

10' High Black Chain Link Fence: To furnish and install 2,340' of 10' high black chain link fence, 60' of 12' high fence on the north court on the west side only and 160' of 3ft. high fence; includes four (4) 3' x 7' high double-swing gate with 36" high overhead transom, using the following materials.

- 1.) 10', 8 ga., 1 3/4" mesh fabric k/k
- 2.) 3" Terminal Post (lg40) wit 2 1/2" sch.80 post sleeved inside and filled with setting agents
- 3.) 2 1/2" Line Post (lg40) with 2" sch.80 post sleeved inside and filled with setting agents
- 4.) 1 5/8" top & bottom rail (lg40)
- 5.) All other necessary accessories

Total..... \$ 235,890.00

Note:

All concrete & paver repairs by others (very little damage doing it this way)
Price includes the removal & disposal of existing fence and gates

***Note:**

Price does not include permit or runner's fee
Price does not include performance & payment bonds
Price does not include clearing, backfill, compaction, grubbing or grading
Price does not include survey or staking of fence line
Daniels Fence will not be held liable for unmarked private utilities (located by others)
Price does not include signed and sealed drawings with calculations
Price good for 10 day

Thank you,
Thomas Kahrhoff
Estimator/Project Manager

2700 Market Place • Stuart, Fl. 34997 • Phone: 772-283-2383 • Fax: 772-283-2565
E-Mail: Tom@DanielsFence.com - License # PBC -U-20941

Martin County Board of County Commissioners Contract: Contract Number RFB2023-3516

Materials:

10Ft. High Black Chain Link with Top & Bottom Rail: 2,340ft. x 41.00 per ft.....\$ 95,940.00
12Ft. High Black Chain Link with Top & Bottom Rail: 60ft. x 44.00 per ft.....\$ 2,640.00
3 ft. High Black Chain Link with Top & Bottom Rail: 160ft. x 26.25 per ft.....\$ 4,200.00
10Ft. High Black Chain Link Corner Post with Braces: (24) x 480.00.....\$ 11,520.00
12Ft. High Black Chain Link Corner Post with Braces: (2) x 525.00.....\$ 1,050.00
Gates: To install (4) 4' x 10' High Black Chain Link Gates (4) x 2,675.00.....\$ 10,700.00

Total.....\$ 126,050.00

Labor: 10', 12' & 3' Fence Install Labor...(310) labor hours x 110.00 per hour...\$ 34,100.00

Fence Removal Labor: (125) labor Hours at 110.00 per hour.....\$ 13,750.00

Sch.80 Additional Parts:

Sch.80 Materials for Internal Post.....\$ 22,404.00 x 51% ...11,426.04.....\$ 33,830.04

Sch. 80 Labor: 256 Labor hours at \$110.00 per hour.....\$ 28,160.00

Material and Labor Total for Sch.80 Internal Post.....\$ 61,990.00

Total.....\$ 235,890.00

***Note:**

Price does not include permit or runner's fee

Price does not include performance & payment bonds

Price does not include clearing, backfill, compaction, grubbing or grading

Price does not include survey or staking of fence line

Daniels Fence will not be held liable for unmarked private utilities (located by others)

Price does not include signed and sealed drawings with calculations

Price good for 10 days

Thank you,

Thomas Kahrhoff

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AGREEMENT BETWEEN COUNTY AND CONTRACTOR FOR CONSTRUCTION SERVICES

THIS AGREEMENT, effective this 22nd day of August in the year, 2023, between:

MARTIN COUNTY, a political subdivision of the State of Florida, through its BOARD OF COUNTY COMMISSIONERS (hereinafter COUNTY), located at 2401 S.E. Monterey Road, Stuart, FL 34996

AND the CONTRACTOR: Daniels Fence Corp.
(hereinafter CONTRACTOR) 2700 SE Market Place
Stuart, FL 34997

Contract Name: Countywide Fencing

Contract Number: RFB2023-3516

Not to Exceed Amount: \$1,750,000.00
(to all vendors combined over maximum 5 years)

Contract Term: Three (3) years plus two (2) 1-year renewal options
Not to exceed 5 years

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ARTICLE 1 DEFINITIONS

Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

- 1.1 Actual Costs. The real Project costs attributable to:
- A. labor, including social security, insurance, fringe benefits required by Agreement or custom, and workers' compensation insurance;
 - B. materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - C. rental machinery and equipment, exclusive of hand tools, whether rented from the CONTRACTOR or others;
 - D. premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 - E. field supervision and field office personnel directly attributable to the charge, exclusive of the cost of estimating, contract administration, and purchasing.
- 1.2 Addenda. Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.
- 1.3 Agreement. The written instrument which is evidence of the Agreement between the COUNTY and the CONTRACTOR covering the Work. Also referred to as "Contract".
- 1.4 Bid Package. The Bid Advertisement, Instructions to Bidders, all Addenda, the Bonds, the Notice of Award, and the Notice to Proceed.
- 1.5 Bonds. The performance bond and payment bond and other instruments of security, furnished by the CONTRACTOR and its surety in accordance with the Contract Documents and in accordance with the laws of Florida.
- 1.6 Change Order. A written document, which is signed by the CONTRACTOR and the COUNTY, that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- 1.7 Claim. Any action, change order, demand, invoice, lawsuit, request, or statement, for money, property, or services made to any agent, employee, or officer of the County. Claim does not include tort claims as that term is used in Section 768.28(5), Fla. Stat., as amended from time to time.
- 1.8 Contract Documents. The documents that establish the rights and obligations of the parties and include the following:
- A. the Agreement (including Exhibits);

- B. the CONTRACTOR's entire completed Bid Package;
- C. the Design Documents;
- D. the Bid Package; and
- E. the approved submittals, and other documents provided by, through, or under the CONTRACTOR that fix, depict, and/or describe the size, quality and character of the Project; however, Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

1.9 Contract Price. The monies paid to the CONTRACTOR under the Contract Documents.

1.10 Contract Times. The number of days or the dates stated in the Agreement to: (A) achieve Substantial Completion; and (B) complete the Work so that it is ready for final payment as evidenced by the COUNTY's written recommendation of final payment.

1.11 CONTRACTOR. The individual or entity with whom the COUNTY has entered into this Agreement.

1.12 Day. A calendar day unless noted otherwise.

1.13 Drawings. That part of the Contract Documents prepared or approved by an engineer that graphically shows the scope, extent, and character of the Work to be performed by the CONTRACTOR (Shop Drawings or other the CONTRACTOR submittals are not Drawings). Also referred to as Construction Plans.

1.14 Effective Date of the Agreement. The date indicated in the Agreement on which it becomes effective (if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties).

1.15 Field Order. A written order issued by the COUNTY that requires minor changes in the Work and may involve a minor change in the Contract Price or the Contract Time.

1.16 Final Completion or Final Acceptance. The completion of all the Work called for under the Contract Documents, including, but not limited to:

- A. satisfactory operation of all equipment supplied by the CONTRACTOR;
- B. correction of all punch list items to the satisfaction of the COUNTY;
- C. payment of all trade contractors, subcontractors, and materialmen;
- D. settlement of all claims, if any;
- E. payment and release of all mechanic's, materialmen's, and similar liens;
- F. delivery of all guarantees, equipment operation and maintenance manuals, Record Drawings, required certificates, and all other required approvals and acceptances by any municipality within Martin County, Martin County itself, the State of Florida or other authorities or agencies having jurisdiction; and

G. removal of all rubbish, tools, scaffolding, and surplus materials and equipment from the Work site.

1.17 Notice to Proceed. A written notice given by the COUNTY to the CONTRACTOR fixing the date on which the Contract Times will commence and on which the CONTRACTOR shall start to perform the Work under the Contract Documents.

1.18 Project Manager. The individual appointed by and acting on behalf of the COUNTY for the duration of the Project; the individual that is responsible for receiving the Applications for Payments from the CONTRACTOR on behalf of the COUNTY.

1.19 Public Record. All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business between the COUNTY and the CONTRACTOR.

1.20 Samples. Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.21 Shop Drawings. All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for the CONTRACTOR and submitted by the CONTRACTOR to illustrate some portion of the Work.

1.22 Specifications. That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

1.23 Substantial Completion. For the purpose of this Agreement, and for the compliance of those procedures, duties and obligations as set forth in the Florida Statutes' "Local Government Prompt Payment Act", the term "Substantial Completion" is defined as that point where the COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that the COUNTY is able to utilize the entire the Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of the Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific as set forth in Exhibits (if any). The Project should be completed to the point that the Work can be utilized for the purposes for which it was intended, as well as the satisfaction of the following requirements: (A) the items that affect operational integrity and function of the Project must be capable of continuous use; (B) all permits and other regulatory requirements must be satisfied; and (C) where required, a Certificate of Occupancy must be issued.

1.24 Superintendent. The individual appointed by and acting on behalf of the CONTRACTOR, as approved by the COUNTY, for the duration of the Project.

1.25 Surety. The corporate body that is responsible for the CONTRACTOR in connection with the Work as set forth in the Bonds and that is included in the most recent United States

Department of the Treasury List of Acceptable Sureties and authorized to issue surety bonds in Florida, and which maintains a surety rating of "A-" or better.

1.26 Underground Facilities. All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.27 Unit Price Work. Services as defined in each individual Work Order to be paid for in accordance with the unit prices indicated in CONTRACTOR's bid.

1.28 Work Order. A formal document that is dated, serially numbered, and executed by both the COUNTY and the CONTRACTOR in response to COUNTY's request for proposal, by which COUNTY accepts CONTRACTOR's proposal for specific Services and CONTRACTOR indicates a willingness to perform such specific Services under the terms and conditions specified in this AGREEMENT.

ARTICLE 2 WORK / PRELIMINARY REQUIREMENTS

2.1 The CONTRACTOR agrees to furnish and complete all authorized and approved work, materials, supplies, tools, furnishings, fixtures, labor, services, equipment, site development, permitting, regulatory matters, environmental mitigation, traffic control, accounting, coordination, and construction of the Project, more specifically described in the Design Documents, as applicable.

2.2 The CONTRACTOR shall be responsible to produce a color audio-visual recording of the Project site prior to construction and upon completion of construction. The CONTRACTOR shall provide the audio-visual recordings on a DVD or USB Flash Drive/Thumb Drive. The purpose of the audio-visual recording is to document the condition of the Project site prior to construction with attention focused on the existence of any faults, fractures, or defects. Therefore, the recording shall be produced by a skilled videographer that is regularly engaged in the production of pre-construction recordings. The video recording shall be produced with sharp picture and accurate colors and shall be free of vibrations, distortion, or other significant picture imperfections; it shall be recorded during daylight hours and when the Project site is free of debris or obstructions. The pan rate, rate of travel, camera height, and zoom rate shall be maintained steady and clear at all times. The audio commentary shall be produced with proper volume and clarity and shall be free of distortion; it shall be simultaneously recorded with the video to assist the COUNTY with the orientation, location, identification, and description of the recorded features that are included in or adjacent to the Project site, which include, but are not limited to: (A) each side of the roadways; (B) sidewalks, bicycle paths, and other modes of transportation facilities; (C) buildings, walls, retaining walls, and seawalls; (D) elements of the stormwater management system, including ponds, culvert ends, and visible drainage structures; and (E) landscaping/trees, visible components of the irrigation system, and fencing.

2.3 Prior to the issuance of the Notice to Proceed, the COUNTY shall schedule a pre-construction meeting with the CONTRACTOR. At the pre-construction meeting, the CONTRACTOR shall submit for the COUNTY's review its audio-visual recording of the Project site, the proposed Critical Path Method (CPM) Schedule, the Final Schedule of Values, personnel and subcontractor lists, and the proposed mobilization requirements. It is the intent

of the pre-construction meeting to ensure that the Project Manager and the Superintendent have a clear understanding of the proposed Work and the requirements of this Agreement and to establish the appropriate Date of Commencement, which may or may not coincide with the date of the pre-construction meeting.

2.4 The Date of Commencement of the Work shall be the date indicated in the Notice to Proceed. The Notice to Proceed shall be issued by the Project Manager after the CONTRACTOR has delivered to the COUNTY the executed Agreement together with the Bonds and Insurance Certificates required in accordance with the Agreement and the Martin County Board of County Commissioners has approved this Agreement. No Work shall be performed by the CONTRACTOR or its Professionals, subconsultants, or subcontractors, and no irrevocable commitments to vendors shall be made prior to the Date of Commencement, at which time, the CONTRACTOR may commence to perform the Work.

2.5 Requirement to E-Verify. ***As a condition precedent to entering into this AGREEMENT***, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

- A. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
- B. The COUNTY, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat., or the provisions of this section shall terminate the contract with the person or entity.
- C. The COUNTY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
- D. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the COUNTY for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the COUNTY as a result of termination of any contract for a violation of this section.
- E. *Subcontracts*. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 3 CONTRACT PRICE; TERM

3.1 The COUNTY shall pay the CONTRACTOR for the performance of Work outlined in each individual Work Order issued in accordance with the Contract Documents, the fixed Contract Price outlined in each individual Work Order, based on the unit costs in the Bid. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for the Project by the COUNTY.

3.2 The CONTRACTOR fully understands that the Lump Sum and/or Unit Price for all items includes a sufficient allowance for the completion of all Work associated with the Project, as depicted in the Contract Documents, including, but not limited to, all profit and overhead, incidentals, all labor, supervision, testing, County inspections, machinery, equipment, tools, utility coordination, clean up, and other means of construction necessary to complete the Work in accordance with all applicable regulatory agencies.

3.3 Term. This Agreement shall be in effect from the effective date listed on page 1 of this Agreement.

3.4 The Two 1-Year Renewal Options. As stated on page 1 of this Agreement, there are two 1-year renewal options. Specifically, the COUNTY may, or may not, ***in its sole discretion***, exercise the option of renewing this Agreement for one additional year on or before the end of the Contract Term, and if the County exercises its option of renewing this Agreement for one additional year, at or before the expiration of the additional year, the COUNTY may, or may not, in its sole discretion, exercise the option of renewing this Agreement for another year. Nothing herein shall be construed to mean CONTRACTOR is entitled or has a legal right to a renewal. This Agreement shall expire on the last day of the Contract Term or after the first or second additional year as applicable. This Agreement may be extended subject to execution of a written agreement between the COUNTY and CONTRACTOR for up to 90 additional days beyond the term and agreed upon renewal options. This option shall be exercised only if all prices, terms and conditions remain the same, or decrease.

ARTICLE 4 CONTRACTOR RESPONSIBILITIES

4.1 CONTRACTOR represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, specifications set forth in each Work Order, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

4.2 The CONTRACTOR shall give all notices and comply with all municipal, local, state and federal laws, ordinances, codes, rules, licenses, and regulations applicable to the Work. If the CONTRACTOR observes that any of the Agreement is contradictory to such laws, rules, and

regulations, it shall notify the Project Manager promptly in writing. If the CONTRACTOR performs any the Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations, it shall bear all related costs.

4.3 The CONTRACTOR understands and acknowledges that all documents and materials provided with the Request for Bid (RFB) package and any addenda are general and preliminary, and that the CONTRACTOR shall not rely on the accuracy or completeness thereof. The CONTRACTOR acknowledges that its duties hereunder shall not be excused or discharged in any respect based on the incompleteness or inaccuracy of any such documents or materials.

4.4 The CONTRACTOR shall be responsible to the COUNTY for acts and omissions of the CONTRACTOR and the CONTRACTOR's agents, employees, professionals, subconsultants, subcontractors, and all other parties performing the Work by, through, and under the CONTRACTOR.

4.5 The CONTRACTOR shall be responsible for the management, coordination and supervision of all construction means, methods, techniques, sequences, and procedures for completion of the Work.

4.6 The CONTRACTOR agrees to bind specifically every professional, subconsultant and subcontractor to the applicable terms and conditions of the Agreement, for the benefit of the COUNTY.

4.7 The CONTRACTOR represents that it is fully experienced and properly qualified to perform the Work under the Contract Documents and that it is properly licensed, equipped, organized, and financed to perform such the Work.

4.8 The CONTRACTOR shall act as an independent contractor and not as the agent of the COUNTY. The CONTRACTOR shall supervise and direct the Work and shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction subject to compliance with the Contract Documents.

4.9 The CONTRACTOR shall employ and maintain a full-time on-site Superintendent who shall have been designated in writing by the CONTRACTOR and pre-approved by the COUNTY. The Superintendent shall be dedicated to this the Project full time and shall have full authority to act on behalf of the CONTRACTOR. The superintendent shall be capable of properly interpreting the Contract Documents and be thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. A Superintendent shall be provided regardless of the amount of work sublet. The Superintendent shall speak and understand English, and the CONTRACTOR shall maintain at least one other responsible person who speaks and understands English, on the project during all working hours. All communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. Copies of written communications given to the Superintendent of the CONTRACTOR shall be mailed to the address set forth in the Agreement for notices. Nothing contained herein shall be construed as modifying the CONTRACTOR's duty of supervision and fiscal management as provided by Florida law. The COUNTY shall have the right of direct removal of any Superintendent of the CONTRACTOR. Any change in the Superintendent of the CONTRACTOR assigned to the Project shall be subject to the COUNTY's prior written approval. The Superintendent shall have full authority to receive instructions from the Owner and/or

Engineer, and to execute the orders or directions of the Owner and/or Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. The Superintendent shall provide such superintendence regardless of the amount of work sublet.

4.10 The CONTRACTOR shall perform at least 30% (thirty percent) of the total amount of the Work in-house. The foregoing 30% (thirty percent) is exclusive of general conditions and material ordered for work performed by sublets.

4.11 The CONTRACTOR shall not employ any subcontractor or Consultant against whom the COUNTY may have reasonable objection in the COUNTY'S sole discretion.

4.12 The CONTRACTOR represents to the COUNTY that the CONTRACTOR (and its officers, directors, partners, or shareholders holding ten 10% (ten percent) or more of the outstanding stock of the CONTRACTOR), does not have any financial interest in or with (i.e. is not an officer, director, partner or 10% (ten percent) plus shareholder) any person, entity, subcontractor, consultant, design professional, materialmen, supplier, or any other subcontractor performing the Work or the Project. The CONTRACTOR agrees to obtain prior written consent from the COUNTY before entering into any agreement on this the Project in which it has a common financial interest.

4.13 The CONTRACTOR shall keep on-site one record copy of all Drawings, Specifications, Addenda, Modifications, and Shop Drawings that is annotated to show all changes made during the construction process. Final acceptance of the Work will be withheld until all such modifications have been properly inserted electronically into the design documents, thus creating Record Drawings, and the Record Drawings are accepted by the COUNTY.

4.14 The CONTRACTOR shall provide the COUNTY two copies of the Record Drawings verifying the as-built conditions for all installed and constructed components of the Work, including, but not limited to, the surface water management, traffic control, lighting, water distribution, and wastewater collection systems. The Record Drawings, which shall be signed and sealed by a Professional Engineer or Surveyor and Mapper, licensed in the State of Florida, must demonstrate to the Project Manager that the Project components were constructed in substantial conformance with the approved Construction Plans and applicable permits and that the Project will function as designed and intended. The Record Drawings must be certified based on an As-Built Survey prepared in accordance with the Standards of Practice established in Florida Administrative Code (FAC) 5J-17.051 and 5J-17.052. If the Project Manager determines that the as-built conditions of one or more components are not constructed in substantial conformance with the approved Construction Plans or that the Record Drawings do not sufficiently demonstrate conformance with the Construction Plans, one set of the Record Drawings will be returned to the CONTRACTOR that identify the deficient component(s) of the Work. The CONTRACTOR shall correct the component(s) or the Record Drawing in the timeframes set forth in Article 6 of this Agreement. Upon acceptance by the Project Manager, the CONTRACTOR shall provide the COUNTY with one (1) copy of the Record Drawings electronically in AutoCAD® and Adobe Acrobat®. The Adobe Acrobat® file shall be a replica of the signed and sealed Record Drawing. Unless the COUNTY agrees otherwise in writing, the Adobe Acrobat® file shall be digitally signed by the Professional Engineer or Surveyor and Mapper, licensed in the State of Florida.

4.15 The CONTRACTOR shall, at its expense, attend any and all meetings called by the COUNTY to discuss the Work under the Agreement.

4.16 The CONTRACTOR shall not establish and shall not allow its employees to engage in any non-Project related commercial activities on the Project site.

4.17 The CONTRACTOR shall, at its expense, arrange for, develop, and maintain all utilities required to execute the Work. Such utilities shall be furnished by the CONTRACTOR at no additional cost to the COUNTY, including, but not be limited to: telephone service for the CONTRACTOR's use; construction power; and potable water, and sanitary sewer. Prior to Final Acceptance of the Work, the CONTRACTOR shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Agreement.

4.18 The CONTRACTOR shall be responsible for the proper control, maintenance, and detour of traffic in the construction area, at all times during the course of the Work. Contractor shall provide and maintain Temporary Traffic Control (TTC) / Maintenance of Traffic (MOT) by a certified Advanced Work Zone Traffic Control officer. All traffic control and maintenance procedures shall be in accordance with the requirements of the Florida Department of Transportation, Martin County, or the local municipality, within their respective area of jurisdiction. It shall be the CONTRACTOR's responsibility, as Bidder, prior to submitting its Bid, to determine the requirements of these agencies so that its Bid reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in the proper control, maintenance, detour of traffic. The CONTRACTOR shall notify all such agencies and the COUNTY at least 7 (seven) days in advance of any traffic detour. No road closures will be permitted unless approved by the COUNTY. The CONTRACTOR shall notify all such agencies and the COUNTY at least 14 (fourteen) days in advance of any road closure.

4.19 The CONTRACTOR is responsible for adequate NPDES-compliant drainage at all times. Existing functioning storm sewers, gutters, ditches, and other run-off facilities shall not be obstructed. Stabilization measures, as defined by the State of Florida Department of Environmental Protection Generic Permit For Stormwater Discharge from Large and Small Construction Activities, as amended, shall be initiated as soon as practicable, but in no case more than 7 days, in portions of the site where construction activities have temporarily or permanently ceased.

4.20 The CONTRACTOR shall ensure that all fire hydrants on or adjacent to the Project shall be kept accessible and no obstruction shall be placed within fifteen feet of any hydrant.

4.21 The CONTRACTOR shall ensure that heavy equipment is not operated close enough to COUNTY assets or other structures to cause their displacement.

4.22 CONTRACTOR certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, Fla. Stat. In addition, CONTRACTOR agrees to observe the requirements of Section 287.135, Fla. Stat., for applicable sub-agreements entered into for the performance of Work under this Agreement.

ARTICLE 5 PAYMENT

5.1 A Schedule of Values shall be approved by the COUNTY prior to the commencement of the Work. The approved Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the COUNTY. Progress payments on account of Unit Price Work will be based on the number of units completed.

5.2 Applications for Payments

- A. The CONTRACTOR shall submit to the COUNTY for review, an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as required by the Contract Documents. Such supporting documents shall include but not be limited to: (i) a current release from the CONTRACTOR releasing all claims, other than those previously submitted pursuant to Article 10 herein, through the date of the Application for Payment; and (ii) a monthly dated Critical Path Method (CPM) Schedule for the Project. Written consent from the surety in a form acceptable to the County regarding the project or payment may be given in lieu of waivers. Submission of this supporting documentation shall be a condition precedent to the CONTRACTOR's entitlement to receive payment. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the COUNTY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect the COUNTY's interest therein, all of which must be satisfactory to the COUNTY.
- B. Beginning with the second Application for Payment, each Application shall include:
- (i) an affidavit by the CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge the CONTRACTOR's legitimate obligations associated with prior Applications for Payment and
 - (ii) a "Conditional Waiver of Right to Claim Against Payment Bond and Martin County" completed by the CONTRACTOR and all subcontractors.
- C. Pursuant to Section 255.078(1), Fla. Stat., the COUNTY will withhold from each progress payment made to the CONTRACTOR the amount of 5% of the payment as retainage. Pursuant to Section 255.078(3), Fla. Stat., the COUNTY may elect not to pay or release any amounts (such as retainage) that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 255.05, Fla. Stat., or otherwise the subject of a claim or demand by the COUNTY or CONTRACTOR.
- D. The Application for Final Payment shall be made after the CONTRACTOR has, in the opinion of the COUNTY, satisfactorily completed all corrections identified during the Final Inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, and other documents.
- E. The Application for Final Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to the COUNTY) of all Lien rights arising out of or Liens filed in connection with the Work.
- F. In lieu of the releases or waivers of Liens and as approved by the COUNTY, the CONTRACTOR may furnish receipts or releases in full and an affidavit of the

CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the COUNTY or the COUNTY's property might in any way be responsible have been paid or otherwise satisfied. If any subcontractor or supplier fails to furnish such a release or receipt in full, the CONTRACTOR may furnish a Bond or other collateral satisfactory to the COUNTY to indemnify the COUNTY against any Lien.

5.3 Review of Applications

A. The COUNTY's approval of any payment requested in an Application for Payment will constitute a representation by the COUNTY that to the best of the COUNTY's knowledge, information and belief:

(i) the Work has progressed to the point indicated;

(ii) the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price the Work, and to any other qualifications stated in the recommendation); and

(iii) the conditions precedent to the CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is the COUNTY's responsibility to observe the Work.

B. The COUNTY's approval of any payment requested in an Application for Payment will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work performed have been exhaustive, extended to every aspect of the Work, or were detailed inspections of the Work; or (ii) there may not be other matters or issues between the parties that might entitle the CONTRACTOR to be paid additionally by the COUNTY or entitle the COUNTY to withhold payment to the CONTRACTOR.

C. The COUNTY may reject the payment request or invoice within 20 (twenty) days after the date on which the payment request or invoice is stamped as received by the COUNTY. The rejection must be in writing and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application.

D. The COUNTY may refuse to make payment of the full amount because:

(i) claims have been made against the COUNTY on account of the CONTRACTOR's performance or furnishing of the Work;

(ii) Liens have been filed in connection with the Work, except where the CONTRACTOR has delivered a specific Bond satisfactory to the COUNTY to secure the satisfaction and discharge of such Liens;

(iii) there are other items entitling the COUNTY to a set-off against the amount recommended.

(iv) the Work is defective or the completed Work has been damaged, requiring correction or replacement;

(v) the Work for which payment is requested cannot be verified;

(vi) the CONTRACTOR failed to make proper payments to subcontractor(s) for labor, materials or equipment in connection with the Work;

(vii) the Contract Price has been reduced because of modifications or there is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

(viii) the COUNTY has been required to correct defective Work or complete the Work in accordance with the Contract Documents;

(ix) the CONTRACTOR failed to carry out the Work in accordance with the Contract Documents, or otherwise unsatisfactory prosecution of the Work;

(x) of any other breach of, default under, violation of, or failure to comply with the provisions of the Contract Documents.

E. If the COUNTY refuses to make payment of the full amount, the COUNTY must give the CONTRACTOR written notice within 10 (ten) days of receipt of invoice stating the reasons for such action and promptly pay the CONTRACTOR any amount remaining after deduction of the amount so withheld. The COUNTY shall promptly pay the CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by the COUNTY and the CONTRACTOR, when the CONTRACTOR corrects the reasons for such action to the COUNTY's satisfaction.

5.4 All payments made to the CONTRACTOR, whether Progress or Final, shall be in strict accordance with the "Local Government Prompt Payment Act" addressing payment, retainage, and punchlist procedures for the performance of the Work.

5.5 The CONTRACTOR warrants and guarantees that title to all the Work covered by an Application for Payment, whether incorporated in the Work or not, shall pass to the COUNTY prior to the making of the Application for Payment, free and clear of all liens, claims, security interests, purchase money security interest, chattel paper or encumbrances of any nature whatsoever ("Liens").

5.6 The CONTRACTOR shall promptly pay all subcontractors, laborers, materialmen, and suppliers upon receipt of payment from the COUNTY out of the amount paid to the CONTRACTOR on account of such person's portion of the Work, the amount to which such person is entitled, reflecting percentages actually retained from payments to the CONTRACTOR. The CONTRACTOR shall, by appropriate agreement with each subcontractor or other person, require each subcontractor or other person to make payments to sub-subcontractors in similar manner.

5.7 A Certificate of Payment, a progress payment, or partial or entire use of the Project by the COUNTY shall not constitute acceptance of Work not in accordance with the Contract Documents.

5.8 In accordance with the provisions of §255.05, Florida Statutes, where the CONTRACTOR requires a waiver from laborers, materialmen, subcontractors, or sub-subcontractors (as each such term is defined by §713.01, Florida Statutes) of the right to make a claim against the Payment Bond in exchange for or to induce payment of a progress payment or a final payment, such waivers shall comply with the form set forth in §255.05, Florida Statutes, as amended from time to time.

5.9 If one or more Notice of Non-Payment is received by the COUNTY, no further payments will be approved until non-payment(s) have been satisfied and a Release of Claim for each Notice of Non-Payment has been submitted to the COUNTY. Upon request, the CONTRACTOR shall furnish acceptable evidence that all such claims or liens have been satisfied. If the CONTRACTOR fails to satisfy the non-payment, the COUNTY may make payment and back-charge the CONTRACTOR for any and all costs associated with such payment.

5.10 If at any time during the progress of the Work, the CONTRACTOR's actual progress is inadequate to meet the requirements of the Agreement, the COUNTY may, but is not required to, notify the CONTRACTOR to implement some or all of the following remedial actions at the sole cost and expense of the CONTRACTOR:

- A. Increase construction manpower in such quantities and crafts as necessary to eliminate the schedule progress deficiency;
- B. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the schedule progress deficiency;
- C. Reschedule the Work in conformance with the specification requirements.

5.11 Neither such notice by the COUNTY nor the COUNTY's failure to issue such notice shall relieve the CONTRACTOR of its obligation to achieve the quality of the Work and rate of progress required by the Agreement.

ARTICLE 6 TIME OF PERFORMANCE

TIME IS OF THE ESSENCE UNDER THIS AGREEMENT.

6.1 Prior to requesting an inspection for Substantial Completion the CONTRACTOR shall confirm that:

- A. All construction is complete, the project components are clean, and all systems fully functional.
- B. All utilities are installed or adjusted, as required, and are fully functional.
- C. The Project site is clear of the CONTRACTOR's excess equipment, temporary facilities and/or trailers.

- D. All operations and maintenance manuals for all equipment have been delivered to the COUNTY.
- E. All operations and maintenance training related literature, software, and back-up disks have been delivered to the COUNTY.
- F. All manufacturers' certifications and warranties have been delivered to the COUNTY.
- G. All required spare parts, materials, as well as any special measuring devices and tools have been delivered to the COUNTY.

6.2 The COUNTY shall have the right to exclude the CONTRACTOR from the Project after the date of Substantial Completion, but the COUNTY shall allow the CONTRACTOR reasonable access to complete or correct items on the punch list.

6.3 When the CONTRACTOR considers the Work ready for its intended use, the CONTRACTOR shall notify the COUNTY, in writing, that the Work is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the COUNTY issue a certificate of Substantial Completion. Promptly thereafter, the COUNTY and the CONTRACTOR shall make an inspection of the Work to determine the status of completion. For the purpose of this Agreement, and for the compliance of those procedures, duties, and obligations as set forth in §218.70 et seq. and §218.735 et seq., Florida Statutes, the term "Substantial Completion" is defined as that point where the COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that the COUNTY is able to utilize the entire Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety, and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of the Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are as set forth in attached Exhibits. If the COUNTY does not consider the Work substantially complete, the COUNTY will notify the CONTRACTOR in writing giving the reasons therefore. If the COUNTY considers the Work substantially complete, the COUNTY will issue and deliver to the CONTRACTOR a certificate of Substantial Completion, which shall fix the date of Substantial Completion. In addition to §218.735(7)(a), Florida Statutes, punch list procedures for construction projects having an estimated cost of less than \$10,000,000 (ten million dollars) to render the Work complete, satisfactory, and acceptable are established as follows:

- A. The intent of this section is for the COUNTY and the CONTRACTOR to cooperate to develop a Final Punchlist no later than 30 (thirty) days from the date of reaching Substantial Completion.
- B. Within 5 (five) days of Substantial Completion of the Project, the CONTRACTOR shall schedule a walkthrough with the COUNTY ("Punchlist Walkthrough"). The purpose of the Punchlist Walkthrough is to determine that the project has achieved Substantial Completion, and if so, to develop a Punchlist of items to be performed by the CONTRACTOR, based upon observations made jointly between the CONTRACTOR and the COUNTY during the Punchlist Walkthrough. The COUNTY shall issue the Final Punchlist within 30 (thirty) days of the Substantial Completion date.

- C. The CONTRACTOR shall endeavor to address and complete as many items as possible noted on the Punchlist either during the Punchlist Walkthrough itself or within 25 (twenty-five) days from the date of the Punchlist Walkthrough.
- D. No more than 20 (twenty) days following the issuance of the Final Punchlist, the CONTRACTOR shall again initiate and request a second walkthrough ("Final Walkthrough") of the Project with the COUNTY. The purpose of the Final Walkthrough is to identify which items on the Punchlist remain incomplete and to supplement that list as legally necessary (based, for example, upon work which may have been damaged as a result of the CONTRACTOR's performance of completion of items contained on the Punchlist.
- E. The CONTRACTOR shall complete the Final Punchlist items within 30 (thirty) days of the date of its issuance by the COUNTY.
- F. In no event may the CONTRACTOR request payment of final retainage under §218.735(7)(e), Florida Statutes, until the CONTRACTOR considers the Final Punchlist to be 100% (one hundred percent) complete.
- G. The CONTRACTOR acknowledges and agrees that no item contained on the Final Punchlist shall be considered a warranty item until such time as: (i) the Final Punchlist is 100% (one hundred percent) complete; and (ii) the COUNTY has been able to operate or utilize the affected punchlist item for 15 (fifteen) days, whichever occurs last.
- H. The CONTRACTOR acknowledges and agrees that the COUNTY may, at their option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the CONTRACTOR to address. The intent of any such lists prior to Substantial Completion is to streamline the Punchlist process upon achieving Substantial Completion, and to allow for the CONTRACTOR to address needed areas of corrective work as they may be observed by the COUNTY during performance of the Work.
- I. The CONTRACTOR acknowledges and agrees that in calculating 150% (one hundred fifty percent) of the amount which may be withheld by the COUNTY as to any Final Punchlist item for which a good faith basis exists as to it being complete, as provided for by §218.735(7)(e), Florida Statutes, the COUNTY may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punchlist item. Such percentage shall in no event relate to the schedule of value associated with such the Work activity, but rather total costs are based upon the cost of completing the Work activity based upon market conditions at the time of Final Punchlist completion.

6.4 If Substantial Completion has not been obtained at the Punchlist Walkthrough inspection called by the CONTRACTOR, for reasons that are the fault of the CONTRACTOR, the cost of any subsequent inspections requested by the CONTRACTOR for the purpose of determining Substantial Completion shall be at the cost of the CONTRACTOR and shall be assessed against the final payment application. Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the CONTRACTOR within the timeframe established.

6.5 Use by the COUNTY, at the COUNTY's option, of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which the COUNTY and the CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by the COUNTY for its intended purpose without significant interference with the CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

- A. The COUNTY may request, in writing, the CONTRACTOR permit the COUNTY to use any such part of the Work which the COUNTY believes to be ready for its intended use and substantially complete. If the CONTRACTOR agrees that such part of the Work is ready for its intended use and substantially complete, the CONTRACTOR will certify to the COUNTY that such part of the Work is substantially complete and will request the COUNTY issue a certificate of Substantial Completion for that part of the Work. The CONTRACTOR may notify, in writing, the COUNTY that the CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request the COUNTY issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either a request or notification is made, the COUNTY and the CONTRACTOR shall inspect that part of the Work to determine its status of completion. If the COUNTY does not consider that part of the Work to be substantially complete, the COUNTY will notify the CONTRACTOR in writing giving the reasons therefore.
- B. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of this Agreement regarding property insurance.

6.6 Upon written notice from the CONTRACTOR that the entire Work, or an agreed portion thereof, is complete, the COUNTY will promptly make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The CONTRACTOR shall immediately take such measures necessary to complete such Work or remedy such deficiencies.

ARTICLE 7 LIQUIDATED DAMAGES; FORCE MAJEURE

7.1 Upon failure of the CONTRACTOR to Substantially Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY's estimated damages resulting from the delay to Substantial Completion.

7.2 Upon failure of the CONTRACTOR to Finally Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY's estimated damages resulting from the delay to Final Completion.

7.3 Milestones, milestone completion dates, and applicable Liquidated Damages shall be in accordance with the Contract Documents.

7.4 If the milestones are not strictly complied with, then Liquidated Damages will be assessed against the CONTRACTOR, which are agreed upon, and it is further agreed that such Liquidated Damages bear a reasonable relationship to damages to be incurred by the COUNTY and are not a penalty.

7.5 Force Majeure. A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affecting the performance of any of its obligations under this agreement, and could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects. If either party invokes this provision to avoid performance of any obligation under this Agreement and a Court determines that party wrongfully invoked this provision to evade performance of such an obligation, the aggrieved party shall be entitled to its reasonable attorney's fees and costs for obtaining the Court's determination of the same.

ARTICLE 8 CLAIMS FOR ADDITIONAL TIME

8.1 If the CONTRACTOR's performance of this Agreement is delayed, either by delays that are beyond the reasonable control and without the fault or negligence of the CONTRACTOR or its subcontractors or by changes ordered in the Work, and in either event where such delay or change in the Work affects the critical path, then the Agreement Time shall be extended by Change Order as determined by the COUNTY. If the CONTRACTOR wishes to make Claim for an increase in the Contract Time, the CONTRACTOR shall provide the COUNTY a written notice of claim upon discovering the cause of the alleged delay. Such notice of claim shall include the following information, or else be waived:

- A. Nature of the delay or change in the Work;
- B. Dates of commencement and cessation of the delay or change in the Work;
- C. Activities on the current progress schedule affected by the delay or change in the Work;
- D. Identification and demonstration that the delay or change in the Work affects the critical path;
- E. Identification of the source of delay or change in the Work;
- F. Anticipated extent of the delay or change in the Work; and
- G. Recommended action to minimize the delay.

8.2 The CONTRACTOR shall not be entitled to any extension of time for delays resulting from any cause unless the CONTRACTOR has notified the COUNTY in writing within 7 (seven) days of commencement of the delay.

8.3 No Damages for Delay; Exclusive Remedy. The CONTRACTOR shall not be entitled to and hereby waives any and all claims for damages which it may suffer by reason of delay, acceleration, loss of efficiency, or other related time or impact-based claims (hereinafter collectively "delay") or for delay attributable to any foreseen or unforeseen condition, or for delays claimed to be the result of active, intentional, knowing, or passive interference by the COUNTY, or its agents, and waives damages that it may suffer by reason of such claims for lost profits, loss or impairment of bonding capacity, destruction of business, extended overhead, supervision, extended, unabsorbed home office overhead; the extension of time granted herein, being the CONTRACTOR's sole remedy, with the exception that in the event of demonstrated

critical, compensable, non-concurrent delay suffered by the CONTRACTOR, the CONTRACTOR may claim as its sole and exclusive remedy any associated, extended direct jobsite general conditions expended by the CONTRACTOR (hereinafter "applicable extended general conditions") in a sum not to exceed \$250.00 per each day of delay. Apart from extensions of time or acceleration costs approved by the COUNTY and any applicable extended general conditions, no payment of claim for delay damages shall be made to the CONTRACTOR as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay be avoidable or unavoidable. Notwithstanding anything herein to the contrary, provided the CONTRACTOR has otherwise satisfied the requirements of this Agreement, the CONTRACTOR shall be entitled to an increase in the Contract Price based upon approved general condition, insurance, and bond premium costs resulting from delays for which the COUNTY has approved by Change Order or Construction Change Directive, provided, however, the COUNTY shall not be required to pay such additional amounts for any days following the date on which the CONTRACTOR achieves Final Completion for the appropriate portion of the Work.

8.4 The time during which the CONTRACTOR is delayed in the performance of the Work by the acts or omissions of the COUNTY, acts of God, unusually severe and abnormal climatic conditions or other conditions beyond the CONTRACTOR's control and which the CONTRACTOR could not reasonably have foreseen and provided against, shall be added to the Contract Time stated in the Agreement; provided, however, that no claim by the CONTRACTOR for an extension of time for such delays be considered unless made in accordance with Paragraph 8.1.

8.5 The COUNTY shall not be obligated or liable to the CONTRACTOR for and the CONTRACTOR hereby expressly waives any claims against any damages, costs, or expenses of any nature whatsoever which the CONTRACTOR, its subcontractors or sub-subcontractors may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, arising from or out of any act or omission of the COUNTY, or any of the events referred to in Paragraph 8.4 above, it being understood and agreed that the CONTRACTOR's sole and exclusive remedy in such event shall be an extension of Contract Time, but only if claim is properly made in accordance with Paragraph 8.1.

8.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled critical path of construction. Based on 30-Year, National Weather Service historical rainfall averages for Martin County, the CONTRACTOR shall anticipate the amount of rainfall days affecting the schedule as normal conditions outlined in the following months below:

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC
2	2	3	2	3	5	5	6	6	5	3	2

**ARTICLE 9
SITE CONDITIONS**

9.1 Field Measurements. Before undertaking each part of the construction, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the COUNTY any conflict, error, or discrepancy that the CONTRACTOR or any of its subcontractors or Suppliers may discover and shall obtain a written

interpretation or clarification from the COUNTY before proceeding with any Work affected. The CONTRACTOR shall remain liable to the COUNTY for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents prepared by the CONTRACTOR.

9.2 Differing Site Conditions. The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the COUNTY in writing of: (A) subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement; or (B) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in this Agreement. The COUNTY will promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or the time required for, performance of any part of the Work under this Agreement, an equitable adjustment shall be made and the Agreement modified in writing accordingly. The CONTRACTOR's failure to provide notice upon discovery of the differing site condition shall waive any entitlement to such an adjustment in the Contract Price or Contract Time.

9.3 Physical Conditions (Including Underground Facilities). The CONTRACTOR shall have full responsibility for physical conditions, and Underground Facilities owned by the COUNTY or others, as shown or indicated in the Contract Documents. The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. The COUNTY shall not be responsible for accuracy or completeness of data, plans, and specifications and the CONTRACTOR shall have full responsibility for checking all information and data. If the Contract Documents necessitate amending to order changes in the Work due to Underground Facilities owned by the COUNTY or others, whether they be shown or indicated or newly discovered, the COUNTY shall authorize the required changes in the Work by Change Order. If those Underground Facilities owned by the COUNTY or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension, or acceleration costs, however caused, except that if the COUNTY and the CONTRACTOR agree that the delays require a change in Contract Time, the COUNTY shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the CONTRACTOR's sole and exclusive remedy with respect to the COUNTY for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance, and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the COUNTY or others as shown or indicated, or from newly discovered Underground Facilities owned by the COUNTY or others.

9.4 Special Requirements for Underground Facilities. The CONTRACTOR shall have full responsibility for the following list. Except as otherwise provided, all costs involved and time required to perform these responsibilities shall be considered as having been included in the Contract Price and in the CONTRACTOR's schedule for the performance of the Work within the Contract Time, even if the Contract Documents need amending to authorize minor deviations or changes in the Work due to those Underground Facilities including utilities.

- A. Field locating any and all Underground Facilities including utilities shown or indicated as to depth and alignment in advance of excavation;
- B. Notifying the COUNTY of any newly discovered Underground Facility and promptly notifying that the COUNTY of that discovery;

- C. Shoring, blocking and protecting Underground Facilities including utilities shown, indicated or discovered;
- D. Coordination, scheduling and sequencing the Work with the COUNTY's of all Underground Facilities shown, indicated or discovered;
- E. Repairing any damage to the satisfaction of the COUNTY, to the extent that the damage was due to the CONTRACTOR's failure to adhere to the requirements, or to the fault or negligence of the CONTRACTOR; and
- F. The safety and protection of any affected the Work, and for repairing any damage done to the work.

9.5 If those Underground Facilities owned by the COUNTY or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension or acceleration costs, however caused, except that if the COUNTY and the CONTRACTOR agree that the delays require a change in Contract Time, the COUNTY shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the CONTRACTOR's sole and exclusive remedy with respect to the COUNTY for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the COUNTY or others shown or indicated, or from newly discovered Underground Facilities owned by the COUNTY or others.

9.6 Unless it prejudices the Work already excavated and uncovered, the CONTRACTOR shall schedule layout, excavation and uncovering of the Work or Underground Facilities a sufficient time in advance to allow the COUNTY'S design professional's review, and the possible amending or supplementing of the Contract Documents.

ARTICLE 10 INDEMNIFICATION

The CONTRACTOR hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of any tier of the CONTRACTOR, its SUBCONTRACTS, CONSULTANTS or SUPPLIERS or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Agreement, or in preparation for the work and services under this Agreement, or any extension, modification, or amendment thereto by change order to otherwise.

The CONTRACTOR hereby agrees to indemnify and hold harmless the COUNTY and its officers and employees from liabilities, damages, lawsuits, and costs, including but not limited to, reasonable attorney's fees and court costs, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in the performance of this Agreement.

ARTICLE 11 TERMINATION

11.1 Notwithstanding any other provision of this Agreement, the CONTRACTOR may be held in default of its contractual obligation under this Agreement if the CONTRACTOR:

- A. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;
- B. fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the CONTRACTOR and the subcontractors;
- C. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- D. performs the Work that does not conform to Contract Documents requirements;
- E. fails to meet the Contract Schedule or fails to make progress on the Work so as to endanger performance of the Agreement;
- F. abandons or refuses to proceed with any or all the Work; or
- G. otherwise breaches, fails to comply fully with, or is in default of any provision of the Contract Documents.

11.2 The COUNTY must provide written notice to the CONTRACTOR notifying it that the COUNTY is declaring it in default and providing the CONTRACTOR with 3 (three) business days after receipt of such written notice of default, to cure such default. In the event that the CONTRACTOR fails to cure the default within the 3 (three) business day default period, the COUNTY may:

- A. take possession of the Work site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR; and
- B. accept assignment of subcontracts pursuant to this Agreement; and
 - (i) finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs against any monies owed or to be owed to the CONTRACTOR, or back charge the CONTRACTOR for any and all such completion costs, or
 - (ii) terminate the CONTRACTOR and hire a completion contractor to finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs, including costs for construction, architectural, engineering, project management, and any other expenses, against any monies owed or to be owed to the CONTRACTOR, or backcharge the CONTRACTOR for any and all such completion costs, or
- C. set off any and all such completion costs against any monies then due or to become due on any other projects that the COUNTY has with the CONTRACTOR.

11.3 Upon default, the CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

11.4 If, after notice of termination, it is determined for any reason that the CONTRACTOR was not in default, or that the delay was excusable under the provisions of the Contract Documents, the rights and obligations of the parties shall be the same as if the notice of termination had been a Termination by the COUNTY for Convenience.

11.5 Pursuant to Section 287.135, Fla. Stat., the COUNTY may immediately terminate this Agreement for cause if the CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification per Section 4.22 of this Agreement; or if the CONTRACTOR, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of this Agreement. As provided in Section 287.135(8), Fla. Stat., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

11.6 Termination by the COUNTY for Convenience. Notwithstanding any other provision to the contrary in the Contract Documents, the COUNTY reserves the right at any time and in its sole and absolute discretion to terminate the services of the CONTRACTOR with respect to the Work by giving written notice to the CONTRACTOR. In such event, the CONTRACTOR shall be entitled to, and the COUNTY shall reimburse the CONTRACTOR for, an equitable portion of the Contract Price based on the portion of the Work completed prior to the effective date of termination and for any other reasonably expended costs attributable to such termination. However, the CONTRACTOR shall not be entitled to receive its anticipated profits for any unperformed Work.

ARTICLE 12 SUSPENSION OF WORK

The COUNTY may, without cause, order the CONTRACTOR in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the COUNTY may determine.

ARTICLE 13 CHANGES IN THE WORK

13.1 The COUNTY may, at any time or from time to time, order additions, deletions, or revisions in the Work by requesting a proposal from the CONTRACTOR detailing the proposed additions, deletions, or revisions to the Work. The proposal shall include such details as man-hours, man-hour rates, quantities, quantity unit rates, equipment, equipment unit rates, and mark-ups. The CONTRACTOR shall complete and return the proposal to the COUNTY within 10 (ten) days from receipt thereof. The proposal shall include any increases or decreases in Contract Time or Contract Price and shall include any additional modifications required by virtue of the requested change, whether or not such additional modifications were specifically identified in the request for proposal. The proposal may then be: (A) issued as a Change Order in accordance with the provisions of the Contract Documents; (B) modified and thereafter issued as a Change Order in accordance with the provisions of the Contract Documents; or (C) withdrawn.

13.2 The COUNTY may authorize minor changes or alterations in the Work involving minimal cost or time and not inconsistent with the overall intent of the Contract Documents. These may

be accomplished by a Field Order. If the CONTRACTOR believes that any minor change or alterations authorized by the COUNTY entitles it to an increase in the Contract Price or extension of Contract Time, it shall treat the Field Order as a request for proposal and issue a proposal for the change in Contract Price and Contract Time prior to proceeding with the Work covered in the Field Order. The procedures outlined in the Contract Documents shall then be followed. Acceptance of the Final Payment by the CONTRACTOR shall constitute acknowledgment by the CONTRACTOR that all payments due for modifications required under Field Orders have been incorporated into the Final Payment.

13.3 Additional Work performed by the CONTRACTOR without authorization of a written Change Order will not entitle it to an increase in the Contract Price or an extension of the Contract Time.

13.4 It is the CONTRACTOR's responsibility to notify its Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The CONTRACTOR shall furnish proof of such adjustment to the COUNTY.

13.5 The COUNTY may, at any time, without notice to the Surety, by Field Order or by properly executed Change Order, make any change in the Work within the general scope of the Contract Documents, including but not limited to changes:

- A. in the Drawings and designs, and Specifications;
- B. in the method or manner of performance of the Work;
- C. directing acceleration in the performance of the Work.

13.6 Except as herein provided, no order, statement, or conduct of the COUNTY shall be treated as a Change Order or Field Order or entitle the CONTRACTOR to an equitable adjustment hereunder.

13.7 No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

13.8 The value of any Work covered by a Field Order, Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways at the sole discretion of the COUNTY:

- A. where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
- B. by negotiated lump sum; or
- C. cost plus. If this option is selected, the COUNTY reserves the right to request any and all documentation from the CONTRACTOR in support of its foregoing Actual Costs, and the CONTRACTOR agrees promptly to supply such information.

13.9 For changes in the Work performed by the CONTRACTOR's own forces, the CONTRACTOR shall be entitled to a percentage 10% (ten percent) mark-up for Actual Costs as defined in Section 1.

13.10 For changes in the Work performed by subcontractors: (A) the subcontractor shall be entitled to mark-up the cost of the change(s) by 10% (ten percent); and (B) the CONTRACTOR shall be entitled to mark-up the subcontractor's total by 5% (five percent). The foregoing shall be the maximum amount allowable for subcontractor's and the CONTRACTOR's Actual Costs as defined in Section 1.

ARTICLE 14 MATERIALS, EQUIPMENT AND WORKMANSHIP; SUBSTITUTIONS

14.1 Only new, unused items of recent manufacture, of designated quality, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by the COUNTY to order removal of rejected materials and equipment shall not relieve the CONTRACTOR from responsibility for quality of the materials supplied or from any other obligation under the Contract Documents.

14.2 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications, will be acceptable regardless of the COUNTY's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve the CONTRACTOR from responsibility for the quality and securing progress of the Work as required by the Contract Documents.

14.3 Prior to proposing any substitute item, the CONTRACTOR shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in the COUNTY's interest, and will in no way have a detrimental effect upon the Project completion date and schedule.

- A. The burden of proof of equality of a proposed substitution for a specified item shall be upon the CONTRACTOR. The CONTRACTOR shall support its request with sufficient test data and other means to permit the COUNTY to make a fair and equitable decision on the merits of the proposal. The CONTRACTOR shall submit drawings, samples, data and certificates and additional information as may be required by the COUNTY for proposed substitute items as required by the Contract Documents.
- B. Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. The COUNTY will be the sole judge of whether or not the substitution is equal in quality, utility, and economy to that specified.
- C. The CONTRACTOR shall allow an additional 15 (fifteen) days for the COUNTY's review of requested substitutions. All requests for substitutions with submittal data must be made at least 50 (fifty) days prior to the time the CONTRACTOR must order, purchase or release for manufacture or fabrication. Approval of a substitution shall not relieve the CONTRACTOR from responsibility for compliance with all requirements of the Agreement. The CONTRACTOR shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

- D. If the COUNTY rejects the CONTRACTOR's requested substitute item on the first submittal, the CONTRACTOR may make only one additional request for substitution in the same category. Upon the second request, the CONTRACTOR shall be invoiced the expenses of the COUNTY allocable to the review of such submittal data. The foregoing amounts shall be deducted, as applicable, from the next succeeding partial payment to the CONTRACTOR, or from the final payment.

ARTICLE 15 COMPLIANCE

15.1 All work, labor, materials and equipment provided under this Agreement shall be performed in strict compliance with any and all applicable building and fire, life and safety codes and strictly in accordance with plans and specifications. The CONTRACTOR must satisfy itself that the Plans, Drawings and Specifications in fact comply with all applicable codes. The CONTRACTOR shall notify the COUNTY prior to commencement of the Work of any requirement of the plans and specifications not in strict compliance with such codes. There will be no extra payment for compliance to existing codes or any item of interpretation regarding enforcement of existing codes. The CONTRACTOR is representing by acceptance of this Agreement that it has thoroughly researched all applicable codes and regulations affecting the Project.

15.2 If, during the term of this Agreement, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Agreement which become effective and which affect the cost or time of performance of the Agreement, the CONTRACTOR shall immediately notify the COUNTY in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Agreement. Upon concurrence by the COUNTY as to the effect of such changes, an adjustment in the Contract Price and/or time of performance will be made. If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, the CONTRACTOR shall immediately report the same in writing to the COUNTY who will issue such instructions as may be necessary. However, it shall not be grounds for a Change Order that the CONTRACTOR was unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work.

15.3 The CONTRACTOR shall give all notices and at all times comply with all applicable laws, codes, ordinances, rules and regulations in effect during the time of performance of the Work.

15.4 The CONTRACTOR shall deliver a product which will meet or exceed the Design package standards, provide a complete and functional facility including but not limited to all necessary interfaces between this facility and adjacent existing facilities, and/or anticipated future facilities. All built-in equipment, systems, controls, devices and finishes necessary for the efficient use and maintenance of the facility and its related site work (if applicable), except as otherwise noted and/or clarified herein, shall be included in the Work.

ARTICLE 16 NON-DISCRIMINATION

The CONTRACTOR covenants and agrees that the CONTRACTOR shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with the respect to hiring, tenure, terms, conditions or privileges of employment, or

any matter directly or indirectly related to employment because of age, sex, physical handicaps (except where based on a bona fide occupational qualification) marital status, race, color, religion, national origin or ancestry.

ARTICLE 17 DEFECTIVE WORK

17.1 The COUNTY shall have authority to disapprove or reject the Work which is "defective" (which term is hereinafter used to describe the Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final acceptance). Such parties shall also have authority to require special inspection or testing of the Work as such parties may individually or severally deem necessary, whether or not the Work is fabricated, installed or completed.

17.2 Upon presentation of a Defective the Work Notice to the CONTRACTOR or the CONTRACTOR's the Project Superintendent, the CONTRACTOR shall meet within 24 (twenty-four) hours with the COUNTY to discuss and develop a plan of remedial action and time-line to correct the defective the Work. The CONTRACTOR shall have no more than three (3) working days to begin corrective action and repairs in accordance with the agreed upon schedule; provided, however, all repairs to natural gas, telephone, radio, computer security, water, waste water, electric air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and the CONTRACTOR shall complete the repairs in an expeditious manner befitting the nature of the deficiency. If the CONTRACTOR refuses to comply with the 24 (twenty four) hour meeting requirement, or the agreed upon correction schedule, the COUNTY has the right to do any of the following: (A) correct any the Work so performed by the CONTRACTOR and deduct the expenses for doing so from the final payment due the CONTRACTOR; or (B) hold back final payment due the CONTRACTOR until such time as the Work is completed to the satisfaction of the COUNTY and in compliance with the Contract Documents. The COUNTY shall have the sole discretion to determine if the Work is satisfactory and in compliance with Contract Documents. The foregoing remedies are not exclusive and the COUNTY reserves the right to pursue any and all other remedies it deems applicable.

ARTICLE 18 BONDS AND INSURANCE

18.1 Payment and Performance Bonds. The CONTRACTOR shall, upon execution and return of this Agreement to the COUNTY, furnish a Public Payment Bond and a Performance Bond, pursuant to §255.05, Florida Statutes, in at least an amount equal to the Contract Price, for any Agreement (Work Order) over \$200,000 (two hundred thousand dollars), covering the faithful performance of this Agreement and all the CONTRACTOR's faithful performance and payment of all the CONTRACTOR's obligations under the Contract Documents. The Bonds shall be recorded at the Martin County Clerk of the Circuit Court's Office at the CONTRACTOR's expense and a copy provided to the County's Purchasing Division (pur_div@martin.fl.us). The Surety must be included in the most recent United States Department of the Treasury List of Acceptable Sureties, authorized to issue surety bonds in Florida, and which maintains a surety rating of "A-" or better. A complete copy of the fully executed Payment Bond shall be posted in a conspicuous place at the Project site. If the Surety on any Bond furnished by the CONTRACTOR is declared bankrupt, becomes insolvent, its authorization to do business in the State of Florida is terminated, it ceases to be listed on the United States Department of Treasury List of Acceptable Sureties, or its surety rating ceases to be an "A-" or better, the CONTRACTOR shall

within 5 (five) days thereafter substitute another Payment Bond, Performance Bond, and Surety, each of which shall be in accordance with the Contract Documents and acceptable to the COUNTY. An action to enforce any claim against a payment bond must be brought within one year from the last furnishing of labor, services, or materials, or as otherwise stated in §95.11 (5)(e), Florida Statutes. An action to enforce any claim against a performance bond must be brought within five years in accordance with §95.11(2)(b), Florida Statutes, and applicable case law.

18.2 Insurance

- A. Certificate of Insurance. One certified true copy of the policy or policies must be furnished by the CONTRACTOR to the COUNTY prior to commencement of any demolition, Site Work, Site preparation or construction Work. The Certificate(s) of Insurance must state Martin County Board of County Commissioners as an Additional Insured on all policies except the Workers Compensation. The statement “Additional Insured” is to be listed in the Description Block of the Insurance Certificate along with the Project name. The indication that Martin County Board of County Commissioners is a Certificate Holder is not sufficient for this issue. The Additional Insured endorsement must be attached to the Certificate of Insurance and shall include coverage for Completed Operations under the General Liability policy.
- B. General Insurance Requirements. The CONTRACTOR and, where designated, each of its subcontractors and sub-subcontractors shall obtain and maintain during the full duration of the Work required under this Agreement, and through any period of limitation allowed by law for actions for personal injury, bodily injury, disease, death, property damages and other losses or damages required to be insured hereunder, the following insurance coverages, in the type, amounts, terms and in conformance with the following minimum requirements.
- (i) All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the COUNTY. All insurance carriers must carry an A.M. Best Rating of A:IX or better and coverage should apply on a Primary and Noncontributory basis. At the discretion of the COUNTY, other coverage types and /or specific endorsements may be required depending upon the type and scope of work to be performed. All insurance must be acceptable by and approved by the COUNTY as to form and types of coverage.
 - (ii) The policy(s) shall provide for 30 (thirty) days prior written notice to the COUNTY, by registered or certified mail, if cancellation or any change that will reduce the coverages required herein.
 - (iii) The policy(s) shall be written for the Contract Times, commencing with the initial demolition, Site Work and/or Site preparation, and ending at the Final Completion and shall contain an endorsement providing for extension of the policy(s) for up to 2 (two) years. The Products and Completed Operations portions of the General Liability shall extend for a period of 10 (ten) years after the Final Acceptance of the Project by the COUNTY and shall include an “Additional Insured” endorsement.
 - (iv) All liability policies required herein shall be written on an occurrence basis

(v) The policies shall name the COUNTY, its commissioners and staff as additional insured (including Completed Operations coverage under the General Liability) as their interest may appear under this Agreement.

(vi) All insurers shall agree to waive all rights of subrogation against the COUNTY and each individual member of COUNTY's Board of County Commissioners, Constitutional Officers, or staff.

(vii) It is the responsibility of the CONTRACTOR to ensure any independent contractors and subcontractors utilized on the project also comply with these insurance requirements.

C. Premiums. The CONTRACTOR shall be solely responsible for payment of all premiums for insurance required under this Agreement and shall be solely responsible for the payment of all deductibles to which such policies are subject.

D. Specific Insurance Limits

(i) Workers' Compensation. The CONTRACTOR shall carry Workers' Compensation insurance on behalf of all employees who are required to provide a service under this Agreement, as required by Chapter 440, Florida Statutes, and Employers Liability of limits no less than:

\$ 500,000	each accident
\$ 500,000	disease - policy limit
\$ 500,000	each employee

Should the scope of work performed by the CONTRACTOR qualify its employees for benefits under Federal the Worker's Compensation Statute (i.e. Longshoreman & Harbor the Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

(ii) Commercial General Liability, with limits of not less than:

\$ 1,000,000	each occurrence
\$ 1,000,000	personal/advertising injury
\$ 2,000,000	products/completed operations (per project aggregate)
\$ 2,000,000	general aggregate (per project aggregate)
\$ 100,000	fire damage legal (any 1 fire)
\$ 10,000	medical expense (any 1 person)

Coverage to include include bodily injury, property damage liability, personal and advertising injury, products and completed operations, fire damage legal liability and medical expense coverage. Contractual Liability is to be included to cover the hold harmless agreement set forth in the Agreement. Coverage is to extend to independent contractors and fellow employees. XCU coverage is to be included. Coverage is to include a cross liability or severability of interest provision as provided under the standard ISO form separation of insureds clause. There should be no "damage to your work" exclusion for work performed by subcontractors. Policy is to include coverage for pollution release at project location in which the insured is performing non-environmental operations. There shall be no exclusion

for mold, silica or respirable dust or bodily injury or property damage arising out of heat, smoke, fumes or ash from a hostile fire. If the project involves environmental exposures, Environmental Impairment Liability coverage shall be maintained.

(iii) Automobile Liability - \$1,000,000 (one million dollars) Combined Single Limit coverage for all owned, hired, leased and non-owned vehicles.

(iv) Umbrella Liability - to include the Employers Liability, general liability and automobile in underlying policy schedule, with limits of not less than \$1,000,000 (one million dollars).

(v) Hazardous Material - if the Work being performed involves hazardous materials, the need to procure appropriate insurance coverage will be addressed in a modification to the Agreement. However, if hazardous materials are identified while carrying out this Agreement, no further the Work is to be performed in the area of the hazardous material until the COUNTY has been consulted as to the need to procure and maintain such coverage.

E. Waiver of Subrogation. The CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent.

ARTICLE 19 PERFORMANCE GUARANTEE AND WARRANTY

19.1 All materials and equipment incorporated into any Work shall be warranted and guaranteed as new quality and of the highest grade of quality for their intended use. All Work shall be performed in good workmanship and shall be in accordance with all Contract Documents and industry standards. The Work shall be functionally sound, technically proficient, developed with structural integrity, and shall be in compliance with all governing laws, regulations, and applicable codes. The CONTRACTOR warrants all Work against defects for a period of 1 (one) year (unless longer guarantees or warranties are provided for elsewhere in the Agreement or at law, in which case the longer periods of time shall prevail) from the date of Substantial Completion, regardless of whether the Work was performed by the CONTRACTOR or any of its subcontractors.

19.2 If defects are identified during the warranty period, the CONTRACTOR shall repair or replace the defect and cure such defect within 48 (forty-eight) hours of receipt of written notice. The CONTRACTOR warrants such repaired or replaced Work for a period of 1 (one) year from the completion of the warranty work or the warranty period specified, whichever is longer. Should the CONTRACTOR fail to timely cure such defects, the COUNTY may proceed to perform the work at the CONTRACTOR's expense and may back charge the CONTRACTOR for all costs associated with the work.

19.3 The CONTRACTOR agrees to require that all of its subcontractors, suppliers, and materialmen provide warranties in their agreements at least sufficient to satisfy the CONTRACTOR's obligations in this Agreement and the CONTRACTOR shall assign all such

warranties to the COUNTY as a condition precedent to the receipt of Final Payment. The CONTRACTOR agrees to defend and indemnify the COUNTY against all fees and costs should the CONTRACTOR fail to obtain the warranty protections required herein.

19.4 For all equipment that has a manufacturer's warranty, the CONTRACTOR shall assign such warranty to the COUNTY. The manufacturer's warranty period shall be concurrent with the CONTRACTOR's warranty to the COUNTY. In the event that the equipment manufacturer or supplier is unwilling to provide such a warranty, the CONTRACTOR shall obtain a 2 (two) year equipment warranty commencing at the time of acceptance of the equipment by the COUNTY.

ARTICLE 20 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

20.1 Documents and Samples at the Site. From and after commencement of the Construction of the Work, the CONTRACTOR shall maintain at the site one record copy of the Construction Documents and any and all amendments thereto, in good order and marked, to record changes to the Contract Documents as approved during the construction of the Project. In addition, the CONTRACTOR shall maintain at the site approved shop drawings, product data, samples, and similar required submittals. These shall be provided to the COUNTY upon completion of the Work.

20.2 Shop Drawings, Product Data and Samples.

- A. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the CONTRACTOR proposes to conform the construction to the Contract Documents.
- B. The CONTRACTOR shall review and take appropriate action upon Shop Drawings, Product Data, Samples, and similar submittals. The COUNTY shall review Shop Drawings, Product Data, Samples, and similar submittals for compliance with the Design Documents and shall provide comments, if any, within 15 (fifteen) days of receiving such documents.
- C. The CONTRACTOR shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the COUNTY's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the CONTRACTOR has specifically informed the COUNTY of such deviation at the time of the submittal and the COUNTY has given written approval to the specific deviation. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals to the COUNTY for approval thereof.

ARTICLE 21 SAFETY

21.1 The CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including,

without limitation, the employees, agents, guests, visitors, invitees, and licensees of the COUNTY and users who may be affected thereby.

21.2 All the Work, whether performed by the CONTRACTOR, its subcontractors or sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

- A. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970 and the Trench Safety Act, as amended, and all state, Martin County and, where the Project is located in a municipality, municipal, rules and regulations now or hereinafter in effect; and
- B. all codes, rules, regulations and requirements of the COUNTY and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

21.3 Should the CONTRACTOR fail to provide a safe area for the performance of the Work or any portion thereof, the COUNTY shall have the right, but not the obligation, to suspend the Work in the unsafe area. All costs of any nature resulting from the suspension, by whomever incurred, shall be borne by the CONTRACTOR.

21.4 The CONTRACTOR shall provide, or cause to be provided, to each worker on the Work site, the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Work site who fails or refuses to use the same. The COUNTY shall have the right, but not the obligation, to order the CONTRACTOR to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the CONTRACTOR shall promptly comply.

21.5 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the COUNTY, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss. If the CONTRACTOR believes that additional Work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Price or an extension of the Contract Time, it may make a claim therefore as provided in the Contract Documents.

ARTICLE 22 PROTECTION OF WORK AND PROPERTY

22.1 The CONTRACTOR: (A) shall, throughout the performance of the Agreement, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause; (B) shall protect the property of the COUNTY and third parties from loss or damage from whatever cause arising out of the performance of the Agreement; and (C) shall comply with the requirements of the COUNTY and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The COUNTY, its insurance carriers or representatives, may, but shall not be required to, make periodic patrols of the Work site as a part of its normal safety, loss control, and security programs. In such event, however, the CONTRACTOR shall not be relieved of its

aforsaid responsibilities and the COUNTY shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the CONTRACTOR by this Agreement.

22.2 Before the CONTRACTOR disposes of any existing improvements or equipment which are to be removed as a portion of the Work and for which disposition is not specifically provided for elsewhere in the Contract Documents, the CONTRACTOR shall contact the COUNTY and determine if the removal items are to be salvaged. Items to be salvaged by the COUNTY shall be neatly stockpiled or stored in a neat and acceptable manner at the construction site easily accessible to the COUNTY. Equipment and materials which will not be salvaged by the COUNTY shall become the property of the CONTRACTOR to be removed from the site and disposed of in an acceptable manner. To the extent the CONTRACTOR intends to temporarily store materials at a site near or adjacent to the Project site prior to ultimate removal or disposal, the CONTRACTOR must first obtain written authorization from the COUNTY, as well as the property owner.

22.3 Preservation of Trees. Those trees which are designated on the Drawings for preservation shall be carefully protected from damage. The CONTRACTOR shall erect and maintain such protections such as barricades, guards, and enclosures as is necessary for the protection of the trees during all construction operations. The CONTRACTOR shall replace any and all trees damaged during construction activities (other than trees specified to be removed) at no expense to the COUNTY.

22.4 Preservation of Private Property. The CONTRACTOR shall exercise extreme care to avoid unnecessary disturbance of private property as applicable. Trees, shrubbery, gardens, lawn and other landscaping that must be removed shall be replaced and replanted to restore the construction easement to the condition existing prior to construction. All soil preparation procedures and replanting operations shall be under the supervision of a nurseryman experienced in such operations. Any vegetation requiring relocation, temporary or otherwise, which is damaged or destroyed, shall be replaced at no cost to the COUNTY. The CONTRACTOR shall replace any and all such vegetation damaged during construction activities (other than vegetation specified to be removed) at no expense to the COUNTY.

22.5 Until final acceptance of the Work by the COUNTY pursuant to this Agreement, the CONTRACTOR shall have full and complete charge and care of and, except as otherwise provided in this subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including the COUNTY-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever.

22.6 Existing manholes, fire alarms, etc., shall not be obstructed by the CONTRACTOR, unless called for in the Contract Documents. The CONTRACTOR is to make no connections to or operate valves on water mains or otherwise interfere with the operation of the water system, without first giving written approval from the appropriate governmental entity.

ARTICLE 23 TESTS AND INSPECTIONS

23.1 If any Work (including the work of others) that is to be inspected, tested, or approved is covered without written concurrence of the COUNTY, it must be uncovered for observation if requested by the COUNTY. Such uncovering shall be at the CONTRACTOR's expense.

23.2 The CONTRACTOR shall be liable for any additional testing or inspections necessitated by defective work performed or materials supplied by the CONTRACTOR or by any of its subcontractors or vendors of any tier.

ARTICLE 24 UTILITY COORDINATION

24.1 The CONTRACTOR shall be responsible for making all necessary arrangements with governmental departments, utilities, public carriers, service companies and corporations owning or controlling roadways, railways, water, sewer, gas, electrical, cable television, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc., including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported, and protected, or the CONTRACTOR shall be solely responsible for coordinating their relocation. The CONTRACTOR: shall (A) give all proper notices; (B) comply with requirements of such parties in the performance of its the Work; (C) permit entrance of such parties on the Work site in order that they may perform their necessary the Work; and (D) pay all charges and fees made by such parties for this the Work. The CONTRACTOR's attention is called to the fact that there may be delays on the Project due to the Work to be done by governmental departments, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties, in every way possible, so that the construction can be completed in the least possible time.

24.2 At all points where the Work constructed by the CONTRACTOR connects to existing utilities and services, the actual the Work of making the necessary connection to the existing service or utility shall be arranged for by the CONTRACTOR at no expense to the COUNTY (unless specifically indicated otherwise). Services and utilities included within (but not limited to) this responsibility are roads, ditches, electrical, sewer, mechanical utilities, water, fencing, etc. Connections shall be made at a time that will result in the least possible interference with existing services.

24.3 FPL calls attention to the fact that there may be energized, high voltage electric lines, both overhead and underground, located in the area of this Project. The CONTRACTOR must visually survey the area and take the necessary steps to identify all overhead and underground facilities prior to commencing construction to determine whether the construction of any proposed improvements will bring any person, tool, machinery, equipment, or object closer to FPL's power lines than the OSHA-prescribed limits. If the CONTRACTOR identifies such, it shall re-design the Project to allow for safe construction given the pre-existing power line location, or make arrangements with FPL to, either deenergize and ground its facilities, or relocate them. The CONTRACTOR must do this before allowing any construction near power lines. If it is necessary for the CONTRACTOR and/or subcontractor to operate or handle cranes, digging apparatus, draglines, mobile equipment, or any other equipment, tools or materials in such a manner that they might come closer to underground or overhead power lines than is permitted by local, state or federal regulations, the CONTRACTOR or subcontractor must notify FPL in writing of such planned operation prior to the commencement thereof and make all necessary arrangements with FPL in order to carry out the work in a safe manner. Any work in the vicinity of the electric lines should be suspended until these arrangements are finalized and implemented. The CONTRACTOR shall be required to complete a "Notification of FPL Facilities" form prior to the commencement of the Work.

ARTICLE 25 HAZARDOUS MATERIALS

The CONTRACTOR shall obtain all required Federal, State, and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage, and use of any explosive or hazardous materials brought onto or encountered within the Project, and at its expense, make good any damage caused by its handling, transporting, storage, and use. The CONTRACTOR will notify the COUNTY immediately if explosive or hazardous materials are encountered on the Project site. Transporting explosive or hazardous materials onto the site will require prior written approval from the COUNTY. The CONTRACTOR shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of its work. In the event that hazardous material is improperly handled or stored by the CONTRACTOR, its subcontractors, or any employee or agent of any of the aforementioned, which results in contamination of the site, the CONTRACTOR shall immediately notify the COUNTY and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the CONTRACTOR's sole cost and expense.

ARTICLE 26 AUDIT

The CONTRACTOR agrees that the COUNTY, or any of its duly authorized representatives, shall have access to and the right to examine any and all books, documents, papers, and records of the CONTRACTOR, and may at its option conduct an audit of the CONTRACTOR's financial books and records concerning this the Project. The CONTRACTOR agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto, which are found on the basis of audit examination, to constitute non-allowable costs under this Agreement. The CONTRACTOR shall promptly refund by check payable to the COUNTY the amount of such reduction of payments. All required records shall be maintained until the latter of the completion of the audit and all questions arising therefore are resolved, or six (6) years after completion of the Work and issuance of the Final Payment.

ARTICLE 27 PUBLIC RECORDS

27.1 The CONTRACTOR shall comply with the provisions of Chapter 119, Fla. Stat. (Public Records Law), in connection with this Agreement and shall provide access to public records in accordance with §119.0701, Fla. Stat. and more specifically Contractor shall:

27.1.1 Keep and maintain public records required by the County to perform the Agreement.

27.1.2. Upon request from the County's custodian of public records, provide the County 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 in Chapter 119, Fla. Stat. or as otherwise provided by law.

27.1.3. 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 term and following completion of the Agreement if the

CONTRACTOR does not transfer the records to the County.

27.1.4. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the CONTRACTOR or keep and maintain public records required by the County to perform the Agreement. If the CONTRACTOR transfers all public records to the County upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

27.2 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (772) 419-6959, public_records@martin.fl.us, 2401 SE MONTEREY ROAD, STUART, FL 34996.

27.3 Failure to comply with the requirements of this Article shall be deemed a default as defined under the terms of this Agreement and constitute grounds for termination.

ARTICLE 28 ASSIGNMENT

28.1 The COUNTY and the CONTRACTOR each binds itself, its officers, directors, qualifying agents, partners, successors, assigns, and legal representatives to the other party hereto and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Agreement.

28.2 The CONTRACTOR shall not assign, transfer, convey, or otherwise dispose of the Agreement or its right, title, or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the COUNTY and Surety.

28.3 If for any reason the COUNTY terminates its Agreement with the CONTRACTOR, the CONTRACTOR hereby assigns this Agreement to the COUNTY. The CONTRACTOR shall include in each of its subcontracts language that requires its subcontractors to agree to such assignment and to perform their responsibilities and to fully complete the work required by this Agreement directly for the COUNTY.

ARTICLE 29 ATTORNEY'S FEES AND COURT COSTS

29.1 In the event the CONTRACTOR defaults in the performance of any of the terms, covenants, and conditions of this Agreement, the CONTRACTOR agrees to pay all damages and costs incurred by the COUNTY in the enforcement of this Agreement, including reasonable attorney's fees, expert fees, court costs, and all expenses, including but not limited to any costs from any state court or federal court proceedings, whether in a trial court or in an appellate court.

29.2 Except as otherwise provided in this Agreement, the parties expressly agree that each party will bear its own attorney's fees and court costs incurred in connection with this Agreement.

ARTICLE 30 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing in at least one of the following methods:

- (a) Certified United States Mail, postage prepaid, return receipt requested; or
- (b) Overnight courier, such as by FedEx or UPS, with a request for receipt acknowledgment; or
- (c) Hand-delivery to a person authorized to accept delivery of notice with a request for a receipt acknowledgment; or
- (d) Email if and only if agreed to in advance by COUNTY and CONTRACTOR in writing specifying the email addresses, and if so agreed, the email shall a request receipt acknowledgement.

The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Martin County Purchasing Division
2401 SE Monterey Rd.
Stuart, FL 34996

WITH A COPY TO:

County Attorney
Martin County
2401 SE Monterey Rd.
Stuart, FL 34996

FOR CONTRACTOR:

Daniels Fence Corp.
2700 SE Market Place
Stuart, FL 34997

CONTRACTOR shall be required to notify the County, in writing, whenever there is a change in the address of CONTRACTOR (to the place) for which notice is to be sent (giving notice), as required in this section. In the event CONTRACTOR fails to maintain a current address on record with the County as required herein, County shall be deemed to have notified CONTRACTOR by using the last known address on record and County shall not have any responsibility or obligation to investigate the validity of the address that CONTRACTOR has provided. As a result, CONTRACTOR agrees to hold County harmless and defend same for any action or occurrence or non-occurrence as a result of CONTRACTOR not receiving notice

due to CONTRACTOR's failure to update its address for notification.

All notices sent in accordance with this section shall be deemed to be effective upon receipt or refusal of same unless otherwise expressly provided in this Agreement.

ARTICLE 31 RESOLUTION OF CLAIMS AND DISPUTES

31.1 As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 (fifteen) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator, who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator. If a party fails to comply with this section, including, but not limited to, filing a lawsuit without mediating before filing the lawsuit, the party in violation shall be liable for the reasonable attorneys' fees and costs of the other party in enforcing this provision, and such amounts shall be awarded by the Court.

31.2 Law, Jurisdiction, Venue, Waiver of Jury Trial. This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Nineteenth Judicial Circuit in and for Martin County, Florida. If any claim arising from, related to or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HERETO EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO AN ADVISORY JURY. If a party fails to withdraw a request for jury trial or for an advisory jury in a lawsuit arising out of this agreement after written notice by the other party of a violation of this section, the party making the request for jury trial or advisory jury shall be liable for the reasonable attorneys' fees and court costs of the other party in contesting the request for jury trial or advisory jury, and such amounts shall be awarded by the Court in adjudicating the motion.

31.3 Certified claims. If CONTRACTOR submits a claim seeking an increase in the Contract Price or an increase in the Contract Time or both, upon the request of the COUNTY in its sole discretion, CONTRACTOR shall, within thirty (30) days, submit to COUNTY a "certified claim," that is, a claim made in writing under oath by a person duly authorized by the CONTRACTOR, and shall contain a statement that:

- (i) The claim is made in good faith;
- (ii) The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
- (iii) The amount of the claim accurately reflects the amount that the claimant believes is due from the COUNTY; and
- (iv) The certifying person is duly authorized by the claimant to certify the claim.

FAILURE TO PROVIDE THE REQUESTED CERTIFICATION WITHIN THE PRESCRIBED PERIOD OF THIRTY (30) DAYS SHALL CONSTITUTE A FORFEITURE OF THE ENTIRE CLAIM.

31.4 False, fraudulent, or inflated claim. If a court finds a certified claim is false, fraudulent, or inflated, whether in whole or in part, CONTRACTOR shall:

- (i) Be liable to the COUNTY for an amount equal to three (3) times the amount of the claim that is false, fraudulent, or inflated;
- (ii) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
- (iii) Be liable to the COUNTY for all costs and fees (including, without limitation, reasonable attorneys' fees, court costs, expert fees, and consulting fees) incurred by the COUNTY to review, defend, and evaluate the claim; and
- (iv) Be subject to debarment from COUNTY contracting for a period not to exceed five (5) years.

31.5 Innocent claimant, notice. Notwithstanding the foregoing, CONTRACTOR is an innocent claimant and not liable for a false, fraudulent, or inflated claim if CONTRACTOR submitted a certified claim to the COUNTY reasonably believing that such claim was free of any material misstatements, or any exaggerated, inflated, or unsubstantiated assertions or damages and had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted, and within fifteen (15) days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the COUNTY with immediate written notice thereof.

ARTICLE 32 MISCELLANEOUS

32.1 Taxes. The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The CONTRACTOR shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY's Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of all federal, state, and local taxes and fees applicable to the Work and same shall be included in the Contract Price.

32.2 Pledge of Credit. The CONTRACTOR shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of the Agreement.

32.3 Entirety of Agreement. All prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein are merged into this Agreement. No modification, amendment, or alteration of this Agreement may be made unless made in writing pursuant to the terms of this Agreement.

32.4 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, then the remaining provisions survive and are fully binding and enforceable.

32.5 Copies. Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original. Faxed, photostatic, or electronically scanned copies of the fully-executed Agreement shall be as effective and authentic as the original for any purpose including but not limited to the enforcement of any provision of this Agreement.

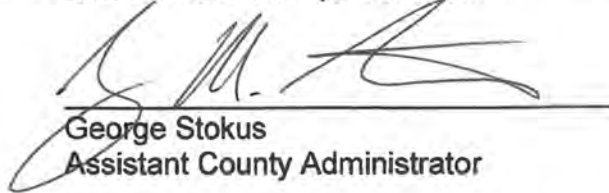
IN WITNESS WHEREOF, the COUNTY and the CONTACTOR have executed this Agreement as of the last date written below.

REVIEWED BY



Kevin Abbate
Parks & Recreation Director

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**



George Stokus
Assistant County Administrator

DANIELS FENCE CORP.



Daniel Lawrence
President

**APPROVED AS TO FORM & LEGAL
SUFFICIENCY**



Sarah W. Woods
County Attorney

EXHIBIT A

SCOPE OF SERVICES

Contract includes all labor, mobilization, materials, permit fees and services necessary for design, permitting, installation, repair and/or replacement of fencing throughout the County on an as needed basis.

Projects (work orders) shall be assigned on an individual basis to any of the awarded Contractors using the Contract Unit prices and based on the total project cost and schedule constraints. Proposals shall be provided within ten (10) business days of request.

All Contract requirements and performance criteria shall be adhered to for each individual project (work order) including but not limited to Notice to Proceed, Contract Time, Contract Price, Substantial Completion, and Final Completion.

Individual projects (work orders) shall not exceed \$300,000.00 per Section 255.20, Florida Statute (as amended).

Liquidated damages shall be determined on a project-by-project basis and identified in the Work Order.

Work Orders **\$200,000 or greater** (or otherwise indicated)

Payment & Performance Bonds shall be required for all Work Orders \$200,000 or greater (or otherwise indicated) and shall be recorded in the public records of Martin County. A certified copy of completed and recorded bonds must be delivered to and accepted by the County (Attn: Purchasing Division / pur_div@martin.fl.us) prior to commencement of the Work. Bond premiums shall be paid by Contractor. Bonds shall be on the form provided by the County and written through a licensed agency that fulfills the requirements of §287.0935, Fla. Stat.

CONTRACTOR RESPONSIBILITIES

- Contractor must perform work during regular business hours except in cases of an emergency.
- Contractor must respond within a 24-hour period for emergency fence repairs.
- Contractor must be properly licensed and be capable of providing insurance required by the sample Agreement included with this Request for Bids (RFB).
- All work shall be warranted for one (1) full year from the date of completion of work.
- Contractor shall be required to repair or restore any damage that is caused by their staff at the Contractor's expense.
- Contractor's employees shall be required to always wear or have identification of themselves as members of the Contractor's staff. The Contractor may be asked to leave premises if in violation of this provision.

- Contractor shall follow safety procedures, provide their staff with the proper safety equipment, and ensure they always wear the equipment while performing their work for the county. This includes proper footwear, hand and eye protection or other necessary safety equipment. The Contractor may be asked to leave premises if in violation of this provision.
- Contractor shall be familiar with important safety procedures while working at water/wastewater treatment facilities and shall communicate to their staff that hazardous materials are present at these locations.
- Contractor must use their own tools for any installation, repairs, and maintenance on-site. Contractor shall dispose of all old fence materials in a lawful manner.

SPECIFICATIONS

All fencing shall be installed per Chain Link Fence Wind Load Guide for the Selection of Line Post and Line Post Spacing (WLG 2445) and Standard Practice for Installation of Chain-Link Fence (ASTM F- 567 14a {2019} or latest edition).

Galvanized fencing material is to be 9 gauge, 6 gauge shall be an option. Knuckle and knuckle fencing shall be an option. All post and rails are to be SCH 40 and properly sized according to Chain Link Fence Wind Load Guide – WLG 2445. Contractor shall use steel ties only, no aluminum ties permitted. Excessive roughness or sharp protrusions existing on the fabric created during the manufacturing process shall be installed in such a manner that the protrusions are not facing the playing area for Park and Recreation sites.

Vinyl fencing is to be 9 gauge fused and bonded for Utilities sites.

Vinyl fencing is to be 9 gauge fused and bonded except for the bottom section of fencing with a backstop, which will be 6 gauge for Parks & Recreation sites.

FDOT Type A Woven Wire Farm Fence – FDOT Type A Fence shall comply with FDOT Standard Plans (latest edition) Index 550-001 with the exception that all fence posts shall be metal posts not wood posts.

FDOT Type B - 6' Chain Link Fence – FDOT Type B Fence shall comply with FDOT Standard Plans (latest edition) Index 550-002.

FDOT Cantilever Slide Gate for Type B Chain Link Fence – FDOT Type B Fence Cantilever Slide Gate shall comply with FDOT Standard Plans (latest edition) Index 550-003.

Post & Rail Fencing shall comply with Martin County Standard Details for Road & Site Construction and Public Facilities (latest edition) Detail P-60. A detail sheet for post and rail fencing is provided with this RFB. (Attachment 1)

Gates / Gate Operators; Repairs, Replacement of Existing Systems, Custom and Standard Configurations for New Systems.

Diamond Rail Fence shall comply with detail sheet provided with this RFB. (Attachment 2)

Double Road Gates shall comply with Martin County Standard Details for Road & Site Construction and Public Facilities (latest edition) Detail P-61. A detail sheet for post and rail fencing is provided with this RFB. (Attachment 3)

Different fence configurations not listed shall be allowed at a cost of labor and material plus markup.

The goods and/or services listed in this bid are for the purposes of price comparison and are not intended to be all inclusive. The County may add goods and/or services at any time during the term of this Agreement at a cost to be agreed upon by the Vendor and the County. Items incidental to the project but not included in the attached bid schedule shall be allowed under this contract.

EXHIBIT B

SAMPLE WORK ORDER



**RFB2023-3516
COUNTYWIDE FENCING
WORK ORDER NO. _____**

Pursuant to that certain Contract ("**Contract**") between Martin County ("**County**") and _____ ("**Contractor**") dated _____, **Contractor** hereby agrees to provide the services specified on Exhibit "A", under the terms and conditions and at a cost of \$_____ all as more specifically described in Exhibit "A", attached hereto and incorporated by this reference. The terms of the **Contract** shall be deemed to be incorporated in each individual Work Order as if fully set forth herein.

Substantial Completion Time: _____ calendar days

Final Completion Time: _____ calendar days

Liquidated Damages: \$_____ per day

IN WITNESS WHEREOF, the **County** and the **Contractor** have executed this Work Order effective this _____ day of _____ 20_____.

(CONTRACTOR NAME)

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

(Name)
(Title)

Department Director Name
Title

Work orders \$200,000 or greater (or otherwise indicated)

Payment & Performance Bonds shall be recorded in the public records of Martin County. **A certified copy of completed and recorded bonds must be delivered to and accepted by the County (Attn: Purchasing Division / pur_div@martin.fl.us) prior to commencement of the Work.** Bond premiums shall be paid by Contractor. Bonds shall be on the form provided by the County and written through a licensed agency that fulfills the requirements of §287.0935, Fla. Stat.

EXHIBIT C

RFB2023-3516
COUNTYWIDE FENCING

This form shall be typewritten. Handwritten forms will not be accepted.

DESCRIPTION	FT	UNIT	MATERIAL COST	INSTALLATION COST (PER HOUR)
Galvanized Fence with Top Rail & Tension Wire	4	LF	\$ 14.88	\$ 110.00
	6	LF	\$ 19.06	
	8	LF	\$ 22.37	
	10	LF	\$ 28.85	
	12	LF	\$ 36.75	
Galvanized Fence with Top Rail & Bottom Rail	4	LF	\$ 21.47	\$ 110.00
	6	LF	\$ 25.58	
	8	LF	\$ 29.06	
	10	LF	\$ 37.22	
	12	LF	\$ 45.31	
Galvanized Corner Post with Braces	4	EA	\$ 160.00	\$ 110.00
	6	EA	\$ 214.50	
	8	EA	\$ 247.50	
	10	EA	\$ 341.25	
	12	EA	\$ 385.00	
Galvanized Terminal Post with Braces	4	EA	\$ 120.00	\$ 110.00
	6	EA	\$ 165.00	
	8	EA	\$ 198.00	
	10	EA	\$ 262.00	
	12	EA	\$ 297.50	
Galvanized Gate with Posts, Braces & Wheels, Double Drive	6	EA	\$ 1,516.60	\$ 110.00
	8	EA	\$ 1,547.29	
	10	EA	\$ 1,693.56	
	12	EA	\$ 1,738.71	
Galvanized Gate with Posts, Braces & Wheels, Roll	6	EA	\$ 1,447.55	\$ 110.00
	8	EA	\$ 1,491.02	
	10	EA	\$ 1,860.78	
	12	EA	\$ 2,047.94	
Vinyl Coated Galvanized Fence with Top Rail & Tension Wire	4	LF	\$ 22.00	\$ 110.00
	6	LF	\$ 24.75	
	8	LF	\$ 29.00	
	10	LF	\$ 34.00	
	12	LF	\$ 38.00	
Vinyl Coated Galvanized Fence with Top Rail & Bottom Rail	4	LF	\$ 26.25	\$ 110.00
	6	LF	\$ 31.00	
	8	LF	\$ 34.00	
	10	LF	\$ 41.00	
	12	LF	\$ 44.00	
Vinyl Coated Galvanized Corner Post with Braces	4	EA	\$ 300.00	\$ 110.00
	6	EA	\$ 350.00	
	8	EA	\$ 390.00	
	10	EA	\$ 480.00	
	12	EA	\$ 525.00	
Vinyl Coated Galvanized Terminal Post with Braces	4	EA	\$ 300.00	\$ 110.00
	6	EA	\$ 350.00	
	8	EA	\$ 390.00	
	10	EA	\$ 480.00	
	12	EA	\$ 525.00	
Vinyl Coated Galvanized Gate with Posts, Braces & Wheels, Double Drive	6	EA	\$ 2,100.00	\$ 110.00
	8	EA	\$ 2,350.00	
	10	EA	\$ 2,675.00	
	12	EA	\$ 2,850.00	

**RFB2023-3516
COUNTYWIDE FENCING**

This form shall be typewritten. Handwritten forms will not be accepted.

DESCRIPTION	FT	UNIT	MATERIAL COST	INSTALLATION COST (PER HOUR)
Vinyl Coated Galvanized Gate with Posts, Braces & Wheels, Roll	6	EA	\$ 2,100.00	\$ 110.00
	8	EA	\$ 2,350.00	
	10	EA	\$ 2,675.00	
	12	EA	\$ 2,850.00	
FDOT Type A Woven Wire Farm Fence W/ Metal Posts - FDOT Standard Plans (latest edition) Index 550-001	1	LF	\$ 16.53	\$ 110.00
FDOT Type B - 6' Chain Link Fence - FDOT Standard Plans (latest edition) Index 550-002	1	LF	\$ 33.83	\$ 110.00
FDOT Cantilever Slide Gate For Type B Chain Link Fence - FDOT Standard Plans (latest edition) Index 550-003	1	EA	\$ 9,487.00	\$ 110.00
Diamond Rail Fence	1	LF	\$ 23.75	\$ 110.00
Post and Rail - Martin County Standard Detail P-60	1	LF	\$ 19.80	\$ 110.00
Double Gate - Martin County Standard Detail P-61	1	EA	\$ 87.55	\$ 350.00
Double Gate - Martin County Standard Detail P-61, Galvanized Option	1	EA	\$ 8,475.00	\$ 350.00

DESCRIPTION	QTY	UNIT	COST
Labor Rate for New Gate Operator or Gate	1	HR	\$ 250.00
Material Markup for Parts		%	51%
Labor Rate for Existing Gate Operator or gate repairs	1	HR	\$ 250.00
Material Markup for Parts		%	51%
Labor Rate for Different Fence Configurations	1	HR	\$ 180.00
Material Markup for Parts		%	51%
Labor Rate for Existing Fence Repairs	1	HR	\$ 180.00
Material Markup for Parts		%	51%

INSTRUCTIONS

Bids must be received no later than the date and time stated in the Advertisement. Bids received after that time & date will not be considered.

Bid form must be signed.

This form must be returned with bid. Bids on any other form will not be accepted.

Daniels Fence
Company Name

Daniel Lawrence
Name of Authorized Representative (Print)

2700 SE Market Place
Street Address

President
Title

Stuart, FL 34997
City, State, Zip

operations@danielsfence.com
E-mail Address

(772) 283-2383
Telephone

Daniel Lawrence
Authorized Signature

Keyed Up Fence

8451 McAllister Way, West Palm Beach, FL 33411
561-743-8986
keyedup@comcast.net • keyedupfence.com

Proposal

Date: 7.5.23
Cable Loc. _____

Permit Needed: No Yes

Where: VILLAGE

Name: NORTH PALM BEACH C.C.

Job Address: TENNIS CENTER

Address: _____

City: _____

Contact Person: BETH

Phone: 641-3433 Fax: _____

Alum Chain Link Wood PVC

B DAUIS @ VILLAGE - NPO.ORG

Height: 10'7 1/2" Footage: 1800 TOTAL

Style: ALL BLACK

REPLACE EXISTING FENCES AND GATES, CUT POSTS AT GROUND LEVEL, PIE HOLES ADJACENT TO OLD POSTS. THIS WILL LIMIT THE DAMAGE TO THE COURTS. USE BOTTOM RAIL.

CHAIN LINK

Barbs: Up Down Gauge Wire: _____

of Terminal Posts: _____

Fence (Top line): _____

Self Closing Regular

WOOD

Sections: _____ In Out

Posts: _____

ALUMINUM

Color: _____

Picket Size: _____

PVC

Color: _____

Style: _____

GATES

(5) 48" WIDE

SPECIAL INSTRUCTIONS

COST OF FENCE: \$ 112,081

PERMIT COST: EXTRA

DEPOSIT AMT: DRAW SCHEDULE

DEP DATE & CK#: _____

BAL. DUE AT COMPLETION: _____

TOTAL COST: \$ 112,081

ACCEPTED: THE ABOVE SPECIFICATIONS AND CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED, YOU ARE AUTHORIZED TO DO THE WORK AS SPECIFIED, PAYMENT WILL BE MADE AS OUTLINED.

Date: _____

Keyed Up Fence Signature: clausen

Customer Signature: _____

*Please return after signing.

Please Note: Keyed Up Fence is not responsible for damage to any sprinkler systems. We install the fence where instructed - but cannot see what's underground. Try to locate your sprinkler lines before our installers start digging. Unforeseen digging conditions such as rock or coral may result in additional charges. The fence represented by this contract/proposal remains the property of Keyed Up Fence until fully paid for. Payment is due upon completion. Thank You.



A Great Fence

751 NW Enterprise Drive, Unit 105, Port St. Lucie, FL 34986
 Licensed and Insured
 (772) 812-0223 Main
 (772) 408-0272 Fax
 www.agreatfence.com

Quote Date:
 Quote #:
 Page #: 1 of 2

Proposal / Contract

Customer	Project
Contractor: Palm Beach Country Club	Name: Palm Beach Country Club
Contact: Joy Groover	Address: 951 US Hwy 1
Address: 951 US Hwy 1	City: North Palm Beach FL 33408
City: North Palm Beach State: FL Zip: 33408	Phone: 561-889-6842
Phone: 561-889-6842 Fax: _____	City: North Palm Beach FL 33408
Cell: _____ Work: _____	561-889-6842
Email: jgroover@village.npb.org	Bid Date: September 20, 2023

CHAIN LINK SPEC	PROJECT DESCRIPTION	VALUE
STYLE N/A	Remove 1760' of chain link at 10+ tennis courts Install 1560' of 10' tall galvanized chain link with 1- 5' walk gate, 1- 4' walk gate & 3- 3' walk gates, install 200' of 3' tall black chain link. Everything is black chain link instead of galvanized (add)	\$ 13,990.00 \$157,260.00 \$14,940.00
TOTAL HEIGHT N/A		
FABRIC HEIGHT N/A		
FABRIC TYPE N/A		
GAUGE N/A		
MESH N/A		
SELVAGE N/A		
BARB WIRE N/A		
TOP RAIL N/A		
LINE POST N/A		
END POST N/A		
CORNER POST N/A		
WALK GATE POST N/A		
DRIVE GATE POST N/A		
GATE FRAMES: SGL N/A		
GATE FRAMES: DBL N/A		
FRAME COATING N/A		
LINE POST FOOTER N/A		
TERM POST FOOTER N/A		
GATE POST FOOTER N/A		
ORNAMENTAL SPEC		
TYPE N/A		
COLOR N/A		
STYLE N/A		
# OF RAILS N/A		
PICKET SIZE N/A		
POST SIZE N/A		
FOOTERS N/A		
PVC/WOOD SPEC		
TYPE N/A		
COLOR N/A		
STYLE N/A		
# OF RAILS N/A		
PICKET SIZE N/A		
POST SIZE N/A		
FOOTERS N/A		

ACCESS CONTROL EXCLUSIONS:

ENGINEERING OF EQUIPMENT LOCATION, POWER TO EQUIPMENT, ANY NECESSARY CONDUIT WORK, TRENCHING, CONCRETE OR ASPHALT REQUIREMENTS, DRYWALL CUTTING/REPAIRS, LANDSCAPING, PROGRAMMING OF SYSTEM CREDENTIALS DATABASE OTHER THAN BASIC SETUP AND CONFIGURATION.

EXCLUSIONS:

REMOVAL OF EXISTING FENCE, PERMITS, TRENCHING, ELECTRICAL GROUNDS, CLEARING & GRUBBING, SIGNED & SEALED DRAWINGS & CALCS, HARD DIG (ROCK, ASPHALT, CONCRETE)

NOTES:

PERMIT COST + 20% ADMINISTRATION FEE IF REQUIRED

TOTAL CONTRACT PRICE

QUOTED PRICES & QUANTITIES ARE PREDICATED UPON BID DOCUMENTS AND/OR CLIENT COMMUNICATION WHICH ARE SUBJECT TO CHANGE VIA CHANGE ORDER UPON VERIFIED FIELD CONDITIONS AND ACTUAL MEASUREMENTS. THIS PROPOSAL WITH TERMS & CONDITIONS MUST BE ADDED TO ALL CONTRACTS OR PO's AS AN EXHIBIT.

Approval of Proposal / Contract: The project price, specifications and Terms / Conditions on page 2 are accepted. A Great Fence, LLC is authorized to do the work specified. Upon signing by Purchaser this becomes a binding contract. SEE REVERSE SIDE FOR TERM / CONDITIONS AND WARRANTY INFORMATION.

- CUSTOMER ACCEPTANCE -

A GREAT FENCE, LLC

SIGNATURE: _____
 TITLE: _____
 DATE: _____

BY: **Darrick Bailey**
 TITLE: **Estimator**
 DATE: **September 20, 2023**



A Great Fence
Licensed and Insured
(772) 812-0223 Main
(772) 408-0272 Fax
www.AGreatFence.com

TERMS & CONDITIONS

- Materials Guaranteed to be specified herein or equal.
- Workmanship: To be completed in a workmanlike manner in accordance with the standards in the industry.
- Fence Location: To be responsibility of Owner / Purchaser. A Great Fence (herin after referred to as AGF) is not responsible for an Owner / Purchaser agrees to hold harmless and indemnify any and all suits or claims for damage(s)resulting from fence location or damage to underground pipe, electrical, telephone, gas, water, cable TV, sprinkler or irrigation systems, swimming pool filter lines or any damage to personal or real property.
- Changes to Contract: Shall be considered a change in the original scope for which the parties contract for and said changes will be add-ons to the contract prices or deducted from the contract price accordingly as determined solely by AGF. In the event changes for less amounts of worked are ordered, Owner / Purchaser will be responsible for costs of materials purchased and labor extended up to the point of change.
- Title in Goods: Owner / Purchaser agrees that title to the goods herein described shall not pass to the Owner / Purchaser until all payments due to AGF are paid in full according to the terms of the contract. Owner / Purchaser agrees to grant AGF free access to the property to remove materials in the event Owner / Purchaser fails to pay AGF according to the terms of this contract.
- Unpaid Balance: Owner / Purchaser agrees to pay AGF 1.5% interest per month (18% annual) for any and all unpaid monies due according to the terms of this contract commencing the day the fence installation is completed, together with the costs of collection, including reasonable attorney's fee's, and removal of fence if applicable.
- Ground Site Conditions: Contract price is based on normal ground conditions, in the event construction debris is found during installation, AGF will notify Owner / Purchaser immediately, and AGF shall be entitled to a cost increase determined by AGF.
- Delays: AGF shall not be liable for delays caused by acts of God, strikes unavailability of materials or other events that are beyond our control.
- Cancellations: Deposit monies will be forfeited by Owner / Purchaser in the event Owner / Purchaser cancels this contract unless expressly agreed to be by AGFF prior to commencement of work. Materials or other items purchased prior to cancellation together with a preparation s fee of 20%of the total job cost will be paid by Owner / Purchaser and deducted from the deposit monies. in the event the Owner / Purchaser fails to cooperate with AGF on any requirements to the completion of this contract, AGF shall cancel this contract and refund deposit less expenses incurred.
- AGF Shall not be responsible for rules and / or restrictions set forth Homeowner / Condo Associations. Any changes will be in addition to the dollar value of this contract.
- If Owner / Purchaser agrees to clear fence line to obstruction (trees, shrubs, branches, debris, existing fence, etc) and fails to do so prior to commencement, AGF installers will do this and charge the Owner / Purchaser an additional \$75.00 per hour, per man, for this work. All obstructions will be left on job site.
- Cancelled and / or Returned Checks: In the event of cancelled and / or returned check, a fee of \$75.00 will be added to final invoice and payment will be due upon receipt by Owner / Purchaser.
- Property Easement Agreements: AGF shall not be responsible for obtaining easement agreements. Owner / Purchaser agrees to obtain easement agreements on their behalf. AGF will not be responsible for utility company or any other company removing or destroying fence.

Special Condition of Sale

Dirt / Rocks and Debris smaller than 2" diameter resulting from post hole excavation will be spread out on job site. Rocks and Debris resulting from same, larger than 2" will be removed from site by AGF. Dirt piles, rocks and debris smaller than 2" diameter can be removed by AGF by customer request only, at an additional charge of \$50.00 per man, per hour.

Warranty as Specified by Manufacturer

The manufacturers warrant that guaranteed as specified against defects in material only . Warranty does not cover labor charges for replacement of defective parts. This warranty does not extend to damage caused by lightning strikes, power surges, accidents, vandalism, abuse, misuse, negligence, or acts of God. Warranty is void if regularly maintenance schedule is not followed. Repairs, adjustments and / or tampering by others negate all warranties. Warranties included materials / equipment only.

VILLAGE OF NORTH PALM BEACH
Country Club Golf Operations

TO: Chuck Huff, Village Manager

CC: Samia Janjua, Deputy Village Manager
Beth Davis, General Manager NPBCC

FROM: Allan Bowman, Head Golf Professional

DATE: October 12, 2023

SUBJECT: **RESOLUTION – Approving a Contract with Drive On Cart Path Systems, LLC for Golf Cart Path Curbing, Extension and Replacement and waiving the Village’s purchasing policies and procedures.**

Village Staff is seeking Village Council approval of a Contract with Drive On Cart Path Systems, LLC for concrete work for golf cart path curbing, extension, and panel replacement at the North Palm Beach Country Club golf course.

The golf cart path project is included in the Fiscal Year 2024 budget. Drive On Cart Path Systems has provided golf cart path curbing, extension, and panel replacement services to the Village for the prior four years. Staff’s goal is to maintain the exact same level of consistency concerning the shape and quality of the work. Additionally, the same company provided the concrete pads for the golf course driving range, and the Village has been extremely satisfied with the work previously performed. The proposed Contract authorizes Drive On Cart Path Systems to perform the work based on unit pricing at a total cost not to exceed \$50,000.00.

While Staff attempted to obtain unit pricing from other companies (see e-mail included as back up), Staff was unable to identify another company willing to perform the work under the same terms and conditions. While the Village did receive a quote from Flying Scot, Inc., that quote required the use of Village “dump buggies.” These vehicles are owned by BrightView Golf Maintenance and not the Village. Because the Village’s purchasing policies and procedures require three quotes for expenditures up to \$50,000, Staff is seeking a waiver of the Village’s purchasing policies and procedures.

Account Information:

Fund	Department	Account Number	Account Description	Amount
Country Club	Golf Course Maintenance	L8045-34680	R&M Rds. & Blding	\$ 50,000.00

The attached Resolution and Contract have been prepared and/or reviewed for legal sufficiency by the Village Attorney.

Recommendation: Village Staff recommends Council consideration and adoption of the attached Resolution approving a Contract with Drive On Cart Path Systems, LLC for golf cart path curbing, extension, and panel replacement at the North Palm Beach Country Club golf course in an amount not to exceed \$50,000.00, with funds expended from Account No. L8045-34680 (Golf Course Maintenance – R & M Streets, Roads, and Paths), and waiving the Village’s purchasing policies and procedures.

RESOLUTION 2023-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, APPROVING A CONTRACT WITH DRIVE ON CART PATH SYSTEMS, LLC FOR CONCRETE CART PATH CURBING, EXTENSION, AND PANEL REPLACEMENT AT THE NORTH PALM BEACH COUNTRY CLUB GOLF COURSE AND AUTHORIZING EXECUTION OF THE CONTRACT; WAIVING THE VILLAGE'S PURCHASING POLICIES AND PROCEDURES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village is in need of concrete work at the North Palm Beach Country Club Golf Course, including the extension of cart paths, the removal and replacement of broken cart path panels and the installation of concrete roll curb; and

WHEREAS, Village Staff solicited quotes for unit pricing and recommended accepting the cost proposal submitted by Drive On Cart Path Systems, LLC; and

WHEREAS, the Village Council determines that the adoption of this Resolution is in the best interests of the residents of the Village of North Palm Beach.

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

Section 1. The foregoing recitals are ratified as true and incorporated herein.

Section 2. The Village Council hereby approves a Contract with Drive On Cart Path Systems, LLC for the extension of cart paths, the removal and replacement of broken cart path panels and the installation of concrete roll curb at the North Palm Beach Country Club Golf Course at a cost not to exceed \$50,000.00, with funds expended from Account No. L8045-34680 (Golf Course Maintenance – R & M Streets, Roads, and Paths). The Village Council further authorizes the Mayor and Village Clerk to execute the Contract, a copy of which is attached hereto and incorporated herein.

Section 3. In approving this Contract and expenditure, the Village Council hereby waives any conflicting provisions of the Village's purchasing policies and procedures.

Section 4. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2023.

(Village Seal)

MAYOR

ATTEST:

VILLAGE CLERK

CONTRACT

This Contract is made as of this _____ day of _____, 2023, by and between the VILLAGE OF NORTH PALM BEACH, 501 U.S. Highway One, North Palm Beach, Florida 33408, a Florida municipal corporation (hereinafter “VILLAGE”), and DRIVE ON CART PATH SYSTEMS, LLC, 3701 Warwick Drive, Cocoa, Florida 32926, a Florida limited liability company (hereinafter “CONTRACTOR”).

RECITALS

WHEREAS, the VILLAGE is in need of concrete work at the North Palm Beach Country Club golf course including, but not limited to, golf cart path curbing, extension, and panel replacement (“Work”); and

WHEREAS, the VILLAGE wishes to accept the unit pricing proposal submitted by CONTRACTOR, and CONTRACTOR has agreed to perform the Work in accordance with the terms and conditions of this Contract.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals.

The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.

2. CONTRACTOR’s Services and Time of Completion.

- A. Contractor shall perform the Work as directed by the VILLAGE in accordance with its unit pricing proposal dated September 22, 2023 (including a single \$1,250.00 mobilization charge), a copy of which is attached hereto and incorporated herein.
- B. This Contract shall remain in effect until such time as the Work is completed, inspected and accepted by the VILLAGE, provided, however, that any obligations of a continuing nature shall survive the expiration or termination of this Contract.
- C. The total cost of the Work shall not exceed **Fifty Thousand Dollars and No Cents (\$50,000.00)**.
- D. The services to be provided by CONTRACTOR shall be commenced subsequent to the execution and approval of this Contract by the VILLAGE and upon written notice from the VILLAGE to CONTRACTOR to proceed and shall be completed within **ninety (90) calendar days**.

3. Compensation to CONTRACTOR.

Payments by the VILLAGE to CONTRACTOR under this Contract shall not exceed the amount of compensation stated in Section 3(C) above without prior written consent of the VILLAGE. CONTRACTOR shall submit invoices to the VILLAGE for review and approval by the VILLAGE's representative, indicating that goods and services have been provided and rendered in conformity with this Contract, and they then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the VILLAGE representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Contract. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on CONTRACTOR's final/last billing to the VILLAGE. This certifies that all goods and services have been properly performed and all charges have been invoiced to the VILLAGE. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by CONTRACTOR. The VILLAGE will not be liable for any invoice from CONTRACTOR submitted thirty (30) days after the provision of all goods and services.

4. Insurance.

During the term of this Contract, CONTRACTOR shall maintain the following minimum insurance coverages and provide certificates evidencing such coverage to the Village (all insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida):

- A. CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence to protect CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract.
- B. CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles.
- C. CONTRACTOR shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.
- D. All insurance, other than Worker's Compensation, Automobile and Professional Liability Insurance, to be maintained by CONTRACTOR shall specifically include the VILLAGE as an "Additional Insured".

5. Indemnification.

- A. To the fullest extent permitted by applicable laws and regulations, CONTRACTOR shall indemnify and save harmless and defend the VILLAGE, its officials, agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action arising out of or in any way related to the services furnished by CONTRACTOR pursuant to this Contract, including, but not limited to, those caused by or arising out of any act, omission, negligence or default of CONTRACTOR and/or its subcontractors, agents, servants or employees.
- B. CONTRACTOR shall not be required to indemnify the VILLAGE, its officials, agents, servants and employees when the occurrence results solely from the wrongful acts or omissions of the VILLAGE, its officials, agents, servants and employees. If CONTRACTOR is at all responsible for the occurrence to any degree, the indemnification provision set forth in subsection A above shall control. The terms of this Section shall survive completion of all services, obligations and duties provided for in this Contract as well as the termination of this Contract for any reason.
- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the VILLAGE or CONTRACTOR, nor shall this Contract be construed a waiver of sovereign immunity beyond the limited waiver provided in Section 768.28, Florida Statutes.

6. Compliance with all Laws, Regulations and Ordinances.

In performing the services contemplated by this Contract, CONTRACTOR shall obtain all required permits (if any) and comply with all applicable federal, state and local laws, regulations and ordinances, including, but by no means limited to, all requirements of the Village Code and the Florida Building Code.

7. Warranty/Guaranty.

In addition to any manufacturer warranties, CONTRACTOR warrants that all Work, including goods and services, provided under this Contract will be free of defects in material and workmanship for a period of one (1) year following completion of the Work and successful final inspection. Should any Work fail to comply with this warranty during the warranty period of one (1) year, upon written notification from the VILLAGE, CONTRACTOR shall immediately repair or replace said defective materials and/or workmanship at CONTRACTOR's sole expense. The CONTRACTOR shall provide the VILLAGE with copies of all manufacturer warranties and certify that the Work complies with the conditions set forth in such warranties, if any.

8. Access/Audits.

CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing services pursuant to this Contract for at least five (5) years after termination of this Contract. The VILLAGE shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business

hours, at CONTRACTOR's place of business. Under no circumstances will CONTRACTOR be required to disclose any confidential or proprietary information regarding its products and service costs.

9. Protection of Work and Property.

- A. CONTRACTOR shall continuously maintain adequate protection of all Work from damage, and shall protect the VILLAGE's property and adjacent private and public property from injury or loss arising in connection with the Contract. Except for any such damage, injury, or loss, except that which may be directly due to errors caused by the VILLAGE or employees of the VILLAGE, CONTRACTOR shall provide any necessary materials to maintain such protection.
- B. Until acceptance of the Work by the VILLAGE, the VILLAGE's property shall be under the charge and care of CONTRACTOR and CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and CONTRACTOR shall repair, restore and make good, without additional Work occasioned by any of the above causes before its completion and acceptance.
- C. CONTRACTOR will also take every necessary precaution to ensure the safety of the VILLAGE and the public and other guests and invitees thereof at or near the areas where work is being accomplished during and throughout the completion of all work.

10. Termination

This Contract may be terminated by the VILLAGE, with or without cause, upon providing ten (10) days' written notice to CONTRACTOR. This Contract may be terminated by CONTRACTOR upon providing thirty (30) days' written notice to the VILLAGE. Notices may be served by first-class mail to the addresses set forth above, electronic mail, or hand-delivery. Upon any such termination, CONTRACTOR waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits. Unless CONTRACTOR is in breach of this Contract, the VILLAGE shall pay CONTRACTOR for work performed and accepted through the date of termination.

11. Miscellaneous Provisions.

- A. Failure of a party to enforce or exercise any of its right(s) under this Contract shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.
- B. CONTRACTOR is, and shall be, in the performance of all Work under this Contract, an independent contractor, and not an employee, agent, or servant of the VILLAGE. All persons engaged in any of the Work performed pursuant to this Contract shall at all times, and in all places, be subject to CONTRACTOR's sole direction, supervision, and control. CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Work.

- C. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. **The parties knowingly, voluntarily and intentionally waiver any right they may have to trial by jury** with respect to any litigation arising out of this Contract.
- D. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
- E. If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.
- F. All notices required in this Contract shall be sent by certified mail, return receipt requested, and sent to the addresses appearing on the first page of this Contract.
- G. The VILLAGE and CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination. In the event of an express conflict between this Contract and CONTRACTOR's Proposal/Pricing Agreement, the terms of this Contract shall control.
- H. CONTRACTOR warrants and represents that CONTRACTOR and all subcontractors are in compliance with Section 448.095, Florida Statutes, as may be amended. CONTRACTOR has registered to use, and shall continue to use, the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of newly hired employees and has received an affidavit from each subcontractor stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. If the VILLAGE has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, the VILLAGE shall terminate this Contract pursuant to Section 448.095(2),

Florida Statutes, as may be amended. If the VILLAGE has a good faith believe that a subcontractor has knowingly violated Section 448.09(1), Florida Statutes, but CONTRACTOR has otherwise complained, it shall notify CONTRACTOR, and CONTRACTOR shall immediately terminate its contract with the subcontractor.

- I. As provided in section 287.135, Florida Statutes, CONTRACTOR certifies that it and any authorized subcontractors are not participating in a boycott of Israel. CONTRACTOR further certifies that it and its affiliates have not been placed on the Convicted Vendor List under section 287.133, Florida Statutes. The VILLAGE and CONTRACTOR agree that the VILLAGE shall have the right to immediately terminate this Contract if CONTRACTOR, its authorized subcontractors or affiliates have been placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, or has been placed on the Convicted Vendor List maintained by the State of Florida.
- J. 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (561) 841-3355; NPBCLERK@VILLAGE-NPB.ORG; OR 501 U.S. HIGHWAY ONE, NORTH PALM BEACH, FL 33408.

In performing services pursuant to this Contract, CONTRACTOR shall comply with all relevant provisions of Chapter 119, Florida Statutes. As required by Section 119.0701, Florida Statutes, CONTRACTOR shall:

- (1) Keep and maintain public records required by the VILLAGE to perform the service.
- (2) Upon request from the VILLAGE's custodian of public records, provide the VILLAGE with a copy 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 in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (3) 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 Contract term and following completion of the Contract if the CONTRACTOR does not transfer the records to the VILLAGE.
- (4) Upon completion of the Contract, transfer, at no cost, to the VILLAGE all public records in possession of CONTRACTOR or keep and maintain public records required by the VILLAGE to perform the services. If CONTRACTOR transfers all public records to the VILLAGE upon completion of the Contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the VILLAGE,

upon request from the VILLAGE's custodian of public records, in a format that is compatible with the information technology systems of the VILLAGE.

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

IN WITNESS WHEREOF, the VILLAGE and CONTRACTOR hereto have made and executed this Contract as of the day and year first above written.

DRIVE ON CART PATH SYSTEMS, LLC

By: _____

Print Name: _____

Position: _____

VILLAGE OF NORTH PALM BEACH

By: _____
DAVID NORRIS
MAYOR

ATTEST:

BY: _____
JESSICA GREEN
VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
VILLAGE ATTORNEY

DRIVE ON

CART PATH SYSTEMS

3701 Warwick Drive ~ Cocoa, FL 32926
Phone (321) 427-4068
Driveoncartpath@hotmail.com

Unit Price Quote

North Palm Beach CC
Palm Beach Gardens, FL

September 22, 2023

Proposed Concrete Flat Work

Install 4" New Concrete Cart Path	@	\$ 6.25 per SF
<i>Price Includes:</i>		
<ul style="list-style-type: none">• <i>Tilling of Existing Turf or Coquina Pathway</i>• <i>Onsite Hauling of Cored Subgrade Material</i>• <i>Subgrade Preparation to 4" Depth</i>• <i>Installation of New Concrete</i>• <i>Rough Backfill of New Concrete (Material Provided by Owner)</i>		
Remove and Replace Broken Cart Path Panels	@	\$ 12.85 per SF
<i>Price Includes:</i>		
<ul style="list-style-type: none">• <i>Demo of Broken Concrete</i>• <i>Onsite Hauling of Broken Concrete</i>• <i>Subgrade Preparation to 4" Depth</i>• <i>Installation of New Concrete</i>• <i>Rough Backfill of New Concrete (Material Provided by Owner)</i>		
Install 4" Monolithic Concrete Roll Curb as Needed	@	\$ 7.95 per LF
Install 4" Retrofitted Concrete Roll Curb as Needed	@	\$ 22.95 per LF
Mobilization Charge (1)	@	\$ 1,250.00 LS

Above Pricing Valid Through 12/31/23

Specifications

- 3,000 PSI Concrete
- Medium Broom Finish
- ¾ lbs Fibermesh Reinforcement per Cu Yd
- Wet Tool Control joints 8' o/c
- Subgrade Preparation to 4" to allow desired drainage by Drive On Cart Path Systems LLC.
- Grassing by pwner
- Concrete Testing by others if required.
- Owner will provide washout locations for concrete trucks.
- Concrete Buggy and Operator provided by Drive On Cart Path Systems LLC.
- Responsibility of traffic control and rope barriers for newly poured concrete by others.
- Owner will be responsible for acquiring all construction permits
- Payment due net 14 days from receipt of invoice. Bimonthly on the 1st and 15th.
- Per ASTM specification, no traffic of any kind will be allowed on new path for at least 28 days from the pour date in order to prevent improper curing and/or damage to cart path surface or comprehensive strength.

Bowman Allan

From: Steve Eakins <steve@dseakins.com>
Sent: Wednesday, September 13, 2023 9:01 AM
To: Bowman Allan
Subject: RE: North Palm Beach CC

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good morning Allen,

Hope all is well! Unfortunately, at this time we don't have the resources to take on this work right now. I would recommend that you reach out to the below companies for quotes, since that is who we would subcontract this work too. Also prices will vary based on size and location. Not sure anyone will give unit rates without knowing the locations and overall scope. Hope this helps.

Pathway Enterprises Inc. 561-478-1822

Wm. D. Adeimy JR Inc. 561-832-6305

Thanks,

Steven Eakins
Vice President



1481 Kinetic Road
Lake Park, Florida 33403
Phone: (561) 842-0010
Fax: (561) 842-0009
Steve@dseakins.com

From: Bowman Allan <abowman@village-npb.org>
Sent: Tuesday, September 12, 2023 10:42 AM
To: Steve Eakins <steve@dseakins.com>
Subject: North Palm Beach CC

Steve –

Can you please update me your prices for the following (I hope all is well as I have not seen you in awhile)

Installation of new cart path 4" - price per sq foot \$

Repair and Replace Broken Cart Path panels – price per sq foot \$

Install 4" retrofitted roll curb – price per lf \$

Mobilization fees =

Fees should include:

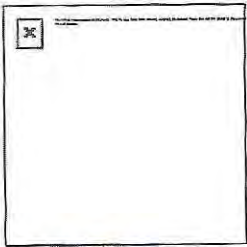
Demo of broken concrete

On-site hauling of broken concrete

Subgrade preparation to 4" depth

Rough backfill of new concrete (material provided by owner)

Thank you



Allan Bowman, PGA A-4

Head Golf Professional | Village of North Palm Beach

Phone: (561) 691-3421

501 U.S. Highway 1 • North Palm Beach • 33408



www.village-npb.org

CAUTION – This email originated from outside of the Village. Please do not open any attachments or click on any links from unknown sources or unexpected email. If you are uncertain please contact the IT department before opening.

Bowman Allan

From: Bowman Allan
Sent: Tuesday, September 19, 2023 2:08 PM
To: William Adeimy ✓
Subject: Re: attention: Estimators - North Palm Beach Country Club

We do not have exact quantities but we intend to spend about \$30,000 - \$ 40,0000 on the project.

Is that helpful?

Allan

Sent from my iPhone excuse typos

On Sep 19, 2023, at 1:40 PM, William Adeimy <wmdadeimy@gmail.com> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Afternoon Allan,

Do you have any quantities available for the items you have requested prices for?

Please advise at your earliest convenience.

Thank you & Have a Great Day

Jessica Mathis

Wm. D. Adeimy Jr. Inc

1201 Omar Road

West Palm Beach, Fl 33405

Phone 561.832.6305

Fax 561.659.7384

Concrete Contractors Since 1945

CGCA07225

On Tue, Sep 19, 2023 at 10:54 AM Bowman Allan <abowman@village-npb.org> wrote:

Steve Eakins referred me to you for prices and consideration for a project at North Palm Beach Country Club

We are looking for process for the following:

Installation of new cart path 4" - price per sq foot \$

Repair and Replace Broken Cart Path panels – price per sq foot \$ (repair and replace are scattered throughout the golf course)

Install 4" retrofitted roll curb – price per lf \$

Mobilization fees =

Fees should include:

Demo of broken concrete

On-site hauling of broken concrete

Subgrade preparation to 4" depth

Rough backfill of new concrete (material provided by owner)

Thank you and please let me know if you have any questions (please also include your availability)



Allan Bowman, PGA A-4

Head Golf Professional | Village of North Palm Beach

Phone: (561) 691-3421

501 U.S. Highway 1 • North Palm Beach • 33408

www.village-npb.org

CAUTION – This email originated from outside of the Village. Please do not open any

Flying Scot, Inc.

11924 w forest hill blvd
Wellington, FL 33414 US
(561) 966-0089
shawn@flyingscotinc.com

Estimate

ADDRESS

VILLAGE OF NORTH PALM
BEACH
645 PROSPERITY FARMS RD.
FLORIDA
NORTH PALM BEACH, FL
33408

ESTIMATE # 1908

DATE 09/12/2023

ACTIVITY	QTY	RATE	AMOUNT
concrete cart path replacement			0.00
FORM AND POUR 4"	1	3.00	3.00
FORM AND POUR 4" CONCRETE CONTRACT #5			
LABOR	0.035	260.00	9.10
MAN HOURS			
MISC	0.017	260.00	4.42
CONCRETE PLACEMENT LABOR AND BUGGIES CONTRACT #2			
Estimate includes use of two Village of North Palm Beach dump buggies to haul concrete pathway and soil material to staging area on site and a golf cart. Permit and engineering by others.			0.00
REMOVE 4" CONCRETE	1	1.75	1.75
REMOVE 4" CONCRETE			
SUBTOTAL			18.27
TAX			0.00
TOTAL			\$18.27

Accepted By

Accepted Date