



Fellsmere

CITY COUNCIL MEETING
22 S. Orange St., Fellsmere FL
January 4, 2024 – 7:00 P.M.
AMENDED AGENDA

1. **CALL TO ORDER:**
2. **ROLL CALL:**
3. **PLEDGE OF ALLEGIANCE**
4. **INVOCATION:**
5. **APPROVAL OF MINUTES:** (a) City Council Meeting of December 6, 2023
6. **PRESENTATION:** (a) Boys and Girls Club of Indian River County
7. **PUBLIC COMMENTS:**
8. **MANAGER'S MATTERS:**
9. **MAYOR'S MATTERS:**
 - (a) Police Department Report- November 2023
 - (b) Public Works Reports -November 2023
 - (c) Status of Developments Report
10. **COUNCIL MEMBER'S MATTERS:**
11. **CITY ATTORNEY'S MATTERS:**
12. **NEW BUSINESS:**
 - (a) **ORDINANCE NO. 2023-33/** AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN AND FUTURE LAND USE MAP SERIES AS REQUESTED BY MARION ESTATES; AMENDING THE TEXT OF THE COMPREHENSIVE PLAN CHAPTER 1. FUTURE LAND USE ELEMENT, GOAL FLUE A. LAND USE OBJECTIVE FLUE A-3 INFILL DEVELOPMENT AND REDEVELOPMEN, POLICY FLUE A-3.2. OVERLAY DISTRICT BOUNDARIES ANDCHAPTER 1. FUTURE LAND USE ELEMENT GOAL FLUE B. FUTURE LAND USE MAP OBJECTIVE FLUE B-5 GARAFOLO; FURTHER AMENDING THE FUTURE LAND USE MAP TO ADD 8.21 ACRES MORE OR LESS AS CR512 OLD TOWN OVERLAY DISTRICT; PROVIDING FOR RATIFICATION; AUTHORITY; COMPREHENSIVE PLAN TEXT AND MAP AMENDMENT; TRANSMITTAL PHASE; ADOPTION PHASE; TRANSMITTAL OF DRAFT PLAN AMENDMENT AND FINAL ADOPTION DOCUMENTS; COMPILATION; SEVERABILITY; CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE./1st Reading and set 2nd Reading and 1st Public Hearing for February 1, 2024 at 7:00 P.M.

- (b) **RESOLUTION NO. 2024-03/A** RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, PERTAINING TO THE GRANTING MAJOR RELIEF BY CONDITIONAL USE PERMIT AND SITE PLAN APPROVAL FOR ONE (1) MOBILE FOOD VENDING UNIT OWNED BY FRUTERIA NUNO, LLC LOCATED AT 32 NORTH BROADWAY IN THE NORTH BROADWAY OVERLAY DISTRICT; PROVIDING FOR RATIFICATION; CONSISTENCY WITH THE COMPREHENSIVE PLAN AND THE LAND DEVELOPMENT CODE; APPROVAL OF CONDITIONAL USE PERMIT AND SITE PLAN; CONDITIONS OF APPROVAL; REPEAL OF CONFLICTING PROVISIONS; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. /1st Reading and set 2nd Reading and Public Hearing for February 1, 2024 at 7:00 P.M
- (c) **RESOLUTION NO. 2024-13/** A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA AUTHORIZING THE ADOPTION OF THE STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT STATEWIDE MUTUAL AID AGREEMENT ("SMAA") AND AUTHORIZING THE MAYOR TO EXECUTE SAME; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.
- (d) **RESOLUTION NO. 2024-17/A** RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FELLSMERE AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE URPOSE OF PROVIDING A PORTION OF THE COSST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS 2023 ILF APLHA E SIDE BOOM MOWER & EQUIPMENT FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.
- (e) **Recommendation** regarding request for Abatement of Code Enforcement Lien for 12740 CR512(Dollar General).
- (f) **Approval** of Work Authorization #1 with Renker Eich Parks Architects to provide architectural services related to the Recreated Train Village project.
- (g) **Approval** of Best Buy Technology update proposal through Omnia Partners Public Sector cooperative purchasing.
- (h) **Approval** of ARPA Amendment.
- (i) **Authorize** the Mayor and City Clerk to execute the "Municipal Elections Agreement" with the Indian River County Supervisor of Elections for the 2024 elections.
- (j) **ORDINANCE NO. 2024-01/AN** ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE TEXT OF THE COMPREHENSIVE PLAN AMENDING CHAPTER 1. FUTURE LAND USE ELEMENT GOAL FLUE B. FUTURE LAND USE MAP, OBJECTIVE FLUE B-4 FELLSMERE 392 AND AMENDING THE COMPREHENSIVE FUTURE LAND USE MAPS TO CHANGE THE LAND USE CLASSIFICATION FROM REGIONAL EMPLOYMENT ACTIVITY CENTER (REAC) TO LOW DENSITY MIXED USE NEIGHBORHOOD (LDMXN) FOR 0.85 ACRES, MORE OR LESS; LOCATED IMMEDIATELY EAST OF INTERSTATE 95 AND NORTH OF COUNTY ROAD 512 WITHIN THE DEVELOPMENT KNOWN AS "FELLSMERE PRESERVE"; PROVIDING FOR RATIFICATION; AUTHORITY; COMPREHENSIVE PLAN TEXT AMENDMENT; MAP DESIGNATION; TRANSMITTAL PHASE; ADOPTION PHASE; TRANSMITTAL OF DRAFT PLAN AMENDMENT AND FINAL ADOPTION DOCUMENTS; COMPILATION; SEVERABILITY; CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE. /1st Reading and set 2nd Reading and 1st Public Hearing for February 1, 2024 at 7:00 P.M
- (k) **Approval** of Professional Services Agreement with "A Walk in the Past Productions" and "Applied Webology FL, LLC".

13. ADJOURNMENT:

Courtesy Access to Meeting

As a courtesy to the public, the city will attempt to provide coverage of the meeting by internet or telephonic means. Due to unforeseen technical or other difficulties access to the meeting may be interrupted or may not be possible at all via internet or by telephonic means, which will result in your inability to participate in the meeting. Should such technical difficulties occur, the meeting will continue without interruption and without your participation. To be assured of participation in the proceedings you must attend the meeting in person. For your information participation by internet or telephone does not constitute "presence" at the meeting under Florida law.

To join meeting from your computer, tablet, or smartphone: <https://meet.goto.com/359547661>

To join meeting using your phone call 1-224-501-3412 Access Code: 359-547-661

Pursuant to Section 286.0105, Florida Statutes, the City hereby advises the public that: If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26 Florida Statutes, any person who may need special accommodations or translators for this meeting must contact the City Clerk's Office at (772) 646-6301 or the TDD Line 772-783-6109 at least 48 hours in advance of the meeting.

Copies of the proposed Ordinance and Resolution are available for review in the Office of the City Clerk, 22 S. Orange Street, Fellsmere FL between the hours of 8:30 a.m. and 12 noon and 1:00 p.m. and 5:00 p.m., Monday through Friday. Interested parties may appear at the meeting and be heard with respect to the proposed Ordinance and Resolution. The City Clerk must receive written comments at least 3 days prior to the Council meetings.

De conformidad con la Sección 286.0105 de los Estatutos de la Florida, la Ciudad informa al público de que: Si una persona decide apelar una decisión tomada por la junta, agencia o comisión con respecto a cualquier asunto considerado en dicha reunión o audiencia, necesitará un registro de los procedimientos, y que, para tal fin, él o ella puede necesitar asegurarse de que se realice un registro literal de los procedimientos, registro que incluya el testimonio y la evidencia sobre la cual se basará la apelación.

De acuerdo con la Ley de Estadounidenses con Discapacidades y la Sección 286.26 de los Estatutos de la Florida, las personas con discapacidades que necesiten adaptaciones especiales para participar en esta reunión deben comunicarse con la secretaria municipal al (772) 646-6301 o comunicarse con la Línea TDD 772-783-6109, al menos 48 Horas antes de la reunión.

Copias de las propuestas Ordenanzas y / o Resoluciones están disponibles para su revisión en la Oficina de la secretaria municipal de la ciudad, 22 S. Orange Street, Fellsmere FL entre las 8:30 a.m. y 12 mediodía y 1:00 p.m. y 5:00 p.m. de lunes a viernes. Las personas interesadas pueden asistir a la reunión y ser escuchadas con respecto a las propuestas de las Ordenanzas y Resoluciones. La secretaria municipal debe recibir comentarios por escrito al menos tres (3) días antes de las reuniones del Consejo.

CO20240104AGENDA.DOC

**CITY COUNCIL MEETING
December 7, 2023 – 7:00 P.M.
MINUTES**

1. **CALL TO ORDER:** Mayor Tyson called the meeting to order at 7:00 p.m.

2. **ROLL CALL:**

PRESENT: Council Member Herrera, Council Member Salgado Council Member Hernandez, Council Member Renick, Attorney Dill, City Manager Mathes and Mayor Tyson

ABSENT:

ALSO, PRESENT: Chief Touchberry, Utility Director Kevin Burge, Public Works Director, and Attorney Rhodeback

3. **PLEDGE OF ALLEGIANCE:** The Pledge was recited.

4. **INVOCATION:** Mayor Tyson gave the Invocation.

5. **APPROVAL OF MINUTES:**

(a) City Council Meeting of November 16, 2023

MOTION by Council Member Renick **SECONDED** by Council Member Hernandez to approve the minutes for the City Council Meeting of November 16, 2023.

ALL AYES:

MOTION CARRIED 5-0

MOTION by Council Member Herrera **SECONDED** by Council Member Salgado to move item #7 Public Comments ahead of item #6.

ALL AYES:

MOTION CARRIED 5-0

7. **PUBLIC COMMENTS:**

Mayor Tyson asked if anyone else from the public had a comment to state their name and address for the record. He asked Manager Mathes to explain what is going on with the flooding events in Fellsmere. Mayor Tyson asked the public if they have one or two spokesperson to speak on behalf of them.

Manager Mathes gave a discussion on the background of how the system works in Fellsmere. He also showed an aerial map of the area of the county west of 95 that encompasses the area that is considered a portion of the Fellsmere Water Control District. Fellsmere Joint Venture told them that the system generally recovers two inches over a 24-hour period. They could take the position that if you get fourteen inches of rain, it may take up to seven days for that water to leave. The water left quicker than seven days.

As far as who is responsible for what, there are six entities that regulate different parts of the system. the federal government through the Army Corps of Engineers, which controls the C54 and the discharge of C54, they have some say in that and whether or not we remove the weir obviously removing the weir, they will get more water out of here quicker because it is not holding back some of the water. But that would be permitting modifications to the Army Corps, you also have the State of Florida, they would also be part of that permit process to make those major changes like that. If Fellsmere Water Control wanted to do that, they would have to get permission from the state and the federal government to do that. Then you have the Fellsmere Water Control District who owns every east west ditch in every north south ditch, that ditches their responsibility and nobody else's. So even though ditches run through the City of Fellsmere, even though they run through unincorporated county, those ditches do not belong to the city, they do not belong to the county. At the same time, I say that the district does not own any pipes. They do not need pipes. All they need is the ditch. In fact, pipes actually are a problem for the district. But we all need pipes because we have to access our property. When you need to access your property and you get a pipe, that pipe is yours. If that pipe fails, you replace the pipe. If you put a pipe in without a permit, and it is too small, that is creating part of the problem, please get your pipes permitted. As far as the county's role, they have very little role with regards to the ditches as he mentioned, however, they are obviously if you live in unincorporated county, they are the folks who respond to you when you need a building permit. They are the ones who allow access down those Fellsmere Water Control District rights away for you to access your property. They have some role because they have allowed you to live in that area of the

county through their zoning rules and their comp plan. roles and permits they offer. They have partnered with the district in trying to fix some of the washouts that occurred.

As far as the City of Fellsmere, they have no role in the ditches legally. That does not mean that the city does not want to help solve the problem. They are entertaining the public as one example of their efforts to help hear their concerns and try to formulate partnerships to get these things resolved. However, the city goes beyond just trying to facilitate solutions, they will even go as far as I try to physically make some improvements. But the city has to be judicious in where they can fix those ditches, they certainly would have a hard time justifying to the City of Fellsmere taxpayers that they are fixing a ditch five miles outside the city limits, but he can certainly justify fishing a ditch that goes through the city and helping those residents outside the city where that ditch leaves the city and now goes into unincorporated county makes no sense for him to fix half a ditch, I'm going to fix a ditch, I'm going to fix the whole ditch.

The city of Fellsmere has a project to fix the New York ditch, that project will be on the street in probably another month. And it is going to regrade that entire ditch is going to replace any pipes that are undersized or in the wrong elevation. They also have a project on 97th Street, which is really the same as New York, but east of Willow they will be doing that portion as well. There's also unincorporated residences there. And again, they are going to do that ditch all the way from the state park all the way to Park Lateral. They have already done some work on the railroad ditch. They have built the North Regional Lake, which is a flood mitigation project to reduce flood levels because now the water has some place to go, except people's front yards and backyards. They also have already finished the 42-acre stormwater lake called the South Regional Lake on the 89th Street ditch, which is the very southern ditch in the city and that is also a flood mitigation project. The city also has \$4 million that they have received from the state to do further stormwater improvements. Those will be more focused and localized in the City of Fellsmere. But one of them happens to be on the ditch that runs down Kentucky Avenue, which is the first ditch south of County Road 512. They will also be expanding a ditch with some hold back structures so that we have places for floodwaters to go along that ditch. Fellsmere has a master stormwater plan, and they update that plan every 10 years, they are currently in the process right now of updating their master plan. He is proud to say that the city's current master plan was done 2015 and the city has almost taken care of every project that was listed in that master plan. He added that the city is very successful in getting grants and that is how they are able to do all the work they do.

Manager Mathes stated that some other things the city has done is attended the Fellsmere Water Control District meeting, they have kept pressure on the district to set the joint city and Fellsmere Water Control District meeting, he expects it would be in January. He added that the meeting would be advertised and suggested they attend. One of the ideas the City of Fellsmere floated is taking over the maintenance of the ditches that fall in the city or run through the city. That is a very beginning conversation, and it will probably be part of the conversation of that joint meeting. They are also meeting at staff level with both the county, the Fellsmere Water Control District, and the city to again talk about how they could work together to solve this issue. That meeting will be coming up in the short term and will help inform the joint meeting between the city and the Fellsmere Water Control District.

Manager Mathes stated that concluded his summary and he would be glad to answer any questions.

Mayor Tyson asked Butch Barnes to come to the podium.

Butch Barnes- 13675 103rd Street, Fellsmere – Mr. Barnes stated he knows what the problem is, and they want to know when someone is going to start to fix the problem. They have been waiting for months for something to happen. He stated that the Fellsmere City Council needs to hold those people responsible because they do not have the power, they are depending on the Fellsmere City Council. He also stated that they want to form a property owner association and want to be able to use the Fellsmere Auditorium. He stated that a lot of people lost a lot because of the flooding and who is going to help these people. He stated that there is no drainage and with all the construction coming Fellsmere is going to drown. He is speaking on behalf of the people sitting in the room who have the same feelings as he does. He wants Fellsmere City Council to hold those people accountable and have them start doing their jobs. He got a lot of rain and the water set for three days and backed up on his property. Amazingly on Monday it dropped two foot. Why? It did not drop two foot after Friday, Saturday, or Sunday, it all backed up. No one can answer that question. Somebody had to open a gate to let the water out.

Manager Mathes responded there is no gate. Butch Barnes stated the C54 gate. In case of an emergency like they had they could have opened that gate. There are lots of ways that they could have gotten rid of the water if our ditches had flowed to let them get rid of the water.

Manager Mathes interjected and stated that was a good point they almost need to have the Fellsmere Water Controls District, and maybe even the county and the city, have an emergency plan so that when they get these unexpected, because no one is expecting fourteen inches in seven hours. But when they get that they should have a plan in place that they know what they need to do, what they can do, what they should do. And he is not sure if they are Fellsmere Water control plan has an emergency plan. I know they city's master plan does not but that is a good idea to put in there. This has spawned an idea that it is a great idea.

Butch Barnes stated that all they are asking to clean the ditches. And they are asking for Fellsmere City Council to help them. He does plan to attend the Fellsmere Water Control District meeting on January 11th, he added that he did not appreciate how he was treated at the last Fellsmere Water Control District meeting it was very unprofessional and he had never been so intimidated. He would like to see a date on paper for when they will be seeing equipment in the ditches. They do not want to be told we do not want to hear it; they want to see it on paper.

Manager Mathes stated that in regard to communication with the district he spoke to the President of the district two days ago and reminded him again of this need to have this joint meeting. He has reached out to them three to four times and he will keep the pressure on him. And it is definitely in their hands. He will notch up his requests on a more frequent basis and keep the pressure on him, but he suggested that the residents should also call. He thanked Council for their time.

Jose Edgardo Aranes- 13960 101st Street, Fellsmere- He is a retired military person, 26 years, retired here in Fellsmere. Part of his job in the military was to be a planner. He does not understand why the district does not have an emergency plan for flooding. He will be attending the joint meeting and recommend some sort of standard operating procedure, where when they have indications that something is going to happen, that is going to end up flooding, a lot of people probably go ahead and get that standard operating procedure done in maybe some sort of emergency management, maybe not the county, but little old Fellsmere here to do that. That would probably mitigate some of that stuff, along with what Butch Barnes said with cleaning the ditches. But that was not very satisfactory, as a taxpayer, to be able to see all that happening. His five-acre farm with horses ended up being one big lake that was all consolidated with the four other farms in the area.

Ron Williams 14275 109th St.- He had a complaint that happened years back, a grove company had come in and put a culvert under 141st and 109th. It is a small culvert. But this backed up in the water was running from Park Lateral back into his property instead of out, the person that owns the property to his west, just started dumping trash and dirt, construction debris and he went down and talked to the them and they told him that he had approved him to do that, because all that water supposed to drain west. So, he wanted to put the plug and now it plugs right into his property. That culvert is actually not supposed to be under 141st, the water is supposed to drain west, according to them. He asked if that was something into which they could look.

Manager Mathes responded that the city has no jurisdiction in that area and that it might be more appropriate for him to reach out to the county and the district. The city has no legal authority to act outside the city.

Mr. Williams stated that it gets kicked back to the Fellsmere Water Control District. Manager Mathes stated that is the confusion the city is not the Fellsmere Water Control District.

Mayor Tyson stated that the city will do what they can, and they will continue to push it. He stated to Mr. Barnes that if he needed help in forming the Property Owners Association, he would be glad to help him with that.

Manager Mathes reminded the audience that the January 11 meeting at 10am is a regular board meeting of the Fellsmere Water Control District and it is not the joint meeting with the City of Fellsmere.

Matt Simmons – Ditch 7, Fellsmere – His road is a dead end, and he has been there for 20 years, and it has not been cleaned out. The ditch has caved on itself on his property and every time they have a flood, everybody's water is going in that ditch, there is nothing going on that ditch is going into his house. He lost his house and part of his grove; he stayed up for three days pumping water. He is concerned that this is not a small project it is a major project because the ditches have to be completely redone. He understands it is expensive, but do they have to wait for the next storm? He also lost a lot of fill dirt about 15-20 truckloads in the ditches. He asked if he was responsible for all that dirt that washed out of my property and if he was going to get compensated for that.

Manager Mathes responded that those ditches are not the City of Fellsmere. The district is responsible for the ditches and if there was a cave in the district is responsible to fix that. If it is a washed-out pipe, it is the property owner's responsibility to fix the pipe. He added that he cannot answer the compensation question.

Susan Adams- 100 S. Pine St., Fellsmere -She introduced herself as the Indian River County Commissioner for district one, which includes this district. She wanted to kind of give some support to the city and some information to the group that is there tonight. They have a staff level meeting between the city and the county and the water control district, scheduled and their goal with that meeting is to have a conversation about how they as separate entities can address the infrastructure concerns that were prevalent in the last flooding event. She also has property and a business on Broadway, and she completely understands and recognizes the concerns that were shared. The county and city can respond to the issues, but they do not have control of the system.

The goal with that meeting is to try to figure out how they can address those things in a positive and constructive manner, whether it is trying to collaborate on grants or cleaning out Park lateral, which is identified as one of the major issues, it will cause money, and it will take time. But if they do not start somewhere, it is never going to happen. And if they do not all combine their efforts to try to push something forward in a positive manner, they are all just going to be spinning their wheels. She stated to the residents that they might see things happening prior to a more public meeting but behind the scenes, they are having discussions so they can put something in place to address the concerns moving forward, because they have heard them on a county level, and she knows the city has heard them also on a city level. Hopefully out of that meeting will come some constructive answers that they can then relay at this public meeting. She wanted all to know that the city and the county are working together on this for those that are in unincorporated county. And that they are partnering and trying to see what they can do globally on this issue.

Mayor Tyson asked Susan Adams what is happening to the money they all pay. Susan Adams stated she did not have an answer.

Mayor Tyson stated that there needs to be a way of keeping all those residents informed about what is going on. Susan Adams responded that one of the goals of the staff level meeting is to try to figure out a way to get the information to the people that need the information.

Debbe Cross- 8350 130th Ave, Fellsmere - She wanted to thank county Road and Bridge. She has created an email address for all of them and she will make sure the Council has it so that if they want to reach her and the citizens, she can pass everything along to all of them.

Mayor Tyson appreciated what she was doing. He stated that if by forming the Property Owners Association, having a place where they all can congregate, and stay up to date with what is going on, that is important. He stated that one of the first things they have to do is file with the state, they cannot open a bank account until they file with the state.

Daniel Judah- 12420 79th Street, Fellsmere- He asked who gives sole ownership of the ditches to the water control district.

Manager Mathes responded that the State of Florida.

Judah asked who controls them, they are obviously not doing much.

Manager Mathes responded that they are an independent district created by the State of Florida. He suggested they reach out to their local legislators and express their disappointment.

Judah stated that phone calls are not going to get very far, he suggested emailing so that it is on file and on paper.

Attorney Warren Dill stated that someone stated that they will be providing their email list, he said that was fine, but he wanted them to know that that list becomes a public record.

Debbie Cross stated that she will not be giving the city the list just her email address, she will not share all those people's addresses.

Attorney Dill stated he just wanted to make that clear that if the city has that list and if somebody asks for it, the city has to give it to them.

Johnson 13755 81st St, Fellsmere - He stated he has been a Fellsmere resident for 23/24 years. He originally purchased property the taxes were \$49 a year, improved it put fence on it, it went to \$490 a year. Now he put a house and a shop and now my property taxes are \$4700 a year along with my

insurance and flood insurance. His question is, when he purchased the property, the 660 by 330 road frontage, he was told he owned to the center of the ditch, which I understand they take ownership, cleaning it all that stuff. And then he gives twenty foot for easement to his neighboring people beyond him so they could get down and up, to get utilities and etc. What is it that they were paying, or someone was paying them to maintain that 330 foot?

Manager Mathes responded that if he is talking property taxes, none of that was going towards maintaining of the ditches because that ditch is not owned by Indian River County, which is who he paid his property taxes to, in addition to paying property taxes, you had an assessment for the district. And it was the district who is supposed to be maintaining that 330 feet minus your culvert. He suggested he attend the district meeting to ask that question.

Mayor Tyson asked if anyone else had a public comment, hearing none he continued with the next agenda item. He thanked all the citizens for coming to the meeting.

6. PUBLIC HEARINGS:

- (a) **ORDINANCE NO. 2023-13/** AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CITY OF FELLSMERE OFFICIAL ZONING MAP TO ADD A ZONING CLASSIFICATION OF PDD-PLANNED DEVELOPMENT DISTRICT FOR LAND HAVING A COMPREHENSIVE FUTURE LAND USE MAP DESIGNATION OF NEIGHBORHOOD COMMERCIAL (NC) CONTAINING 0.58 ACRES, MORE OR LESS, LOCATED AT 12645/12665 COUNTY ROAD 512; PROVIDING FOR RATIFICATION; PROVIDING FOR CONSISTENCY WITH COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE; PROVIDING FOR ZONING; PROVIDING FOR ZONING MAP; FURTHER PROVIDING FOR SEVERABILITY, CONFLICT, AND AN EFFECTIVE DATE./ *2nd Reading and Public Hearing*

Mayor Tyson introduced the Ordinance and Attorney Dill read Ordinance No 2023-13, by title only.

Manager Mathes stated that he would like to make one presentation for this item and the next item. They are both the same item, this is the rezoning, and the next item is the approval of the plan.

Manager Mathes proceeded with showing Council where the property is on a map. He stated that this is a mixed-use building, and it has been a mixed-use building since it first came into the city many years ago and even before that when it was in the county. The reason it is before them today is because the new owner, has owned it for a few years now, wants to add an additional use that was not on the original approval so therefore a revised site plan is needed. But the use they want is not allowed in the zoning district they have so they requested a rezoning to plan development so they can have that use and that use is outdoor storage.

Moving on to the site plan, they have gotten rid of the original driveway that was on CR512. And now they basically have a U-shaped access through their property. With the existing building right in the middle. They have a public space in front for people of the retail building, and the person who lives in the apartment complex with a handicapped spot that has not been built yet and then six spaces which meet code. The private space in the back, which will be their outdoor storage. Because of the outdoor storage, the city code requires a 25-foot buffer. There is a 25-foot buffer around the property.

Being concerned at staff level about the surrounding residential neighborhood, he wanted to talk to about some of the conditions that they put on the property. These are not conditions on the rezoning, rezoning do not do conditions. These are the conditions of the site plan approval.

The city did require that they dedicate ten feet of land along 512, because of the widening of 512 in the near future. And the city also put a condition regarding the condition of 126th court. That is one of the relief they requested as part of the plan development. The city code normally requires that if you are a business on an unpaved road, you have to pave that portion of the road to your last driveway. Being a mom-and-pop staff supported their request for a waiver of that. And if it ever becomes problematic, because of their use, the city has the ability to revoke that waiver and say you need to fix that and pave that up. Same thing goes with their use of non-paved driveway services and parking which is a standard condition the city puts in any approval that does not use paved driveways and parking and that if for some reason that becomes a problem, you have to pave that upon city's request. And then they talked about the machinery, equipment, and deliveries that may occur outdoors. And they basically allow that only from 9am to 5pm, so there will be no noise generating after five and before nine. So that is how they have dealt with their concerns with the community. The city did not waive the buffer, landscaping, or the buffer with that we did also have a second relief to move the required fence from ten feet off the property line to five feet off

the property line, there is still an opaque fence that instead of being ten feet off, it would be five feet off.

Mayor Tyson asked if this is the property in front of Dollar General. Manager Mathes confirmed it was.

Mayor Tyson opened the Public Hearing and asked if anyone in the audience wished to speak on Ordinance 2023-13 to come to the podium and state their name and address for the record, hearing no more comments he closed the public hearing.

MOTION by Council Member Renick **SECONDED** by Council Member Salgado to adopt Ordinance No. 2023-13

ALL AYES

MOTION CARRIED. 5-0

ROLL CALL: AYES: Council Member Herrera, Council Member Salgado, Council Member Hernandez, Council Member Renick and Mayor Tyson **NAYS:**

ALL AYES

MOTION CARRIED. 5-0

RESOLUTION NO. 2023-20/ A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, APPROVING THE FINAL DEVELOPMENT PLAN FOR A PLANNED DEVELOPMENT FOR RETAIL OFFICE, OUTSIDE DISPLAY, OUTSIDE STORAGE, WHOLESALING, NURSERY, HAND CAR WASH AND ONE (1) APARTMENT UNIT; PROVIDING FOR RATIFICATION; PROVIDING FOR CONSISTENT WITH COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE; PROVIDING FOR FINAL DEVELOPMENT PLAN APPROVAL WITH CONDITIONS; AND FURTHER PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS AND AN EFFECTIVE DATE. / **2nd Reading and Public Hearing**

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2023-20, by title only.

Manager Mathes stated he had nothing further to add.

Mayor Tyson opened the Public Hearing and asked if anyone in the audience wished to speak on Resolution No. 2023-20 to come to the podium and state their name and address for the record, hearing no more comments he closed the public hearing.

MOTION by Council Member Herrera **SECONDED** by Council Member Hernandez to adopt Ordinance No. 2023-20.

ALL AYES

MOTION CARRIED. 5-0

ROLL CALL: AYES: Council Member Herrera, Council Member Salgado, Council Member Hernandez, Council Member Renick and Mayor Tyson **NAYS:**

ALL AYES

MOTION CARRIED. 5-0

- (b) **ORDINANCE NO. 2023-28/** AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CITY OF FELLSMERE OFFICIAL ZONING MAP TO CHANGE THE ZONING CLASSIFICATION FROM INDIAN RIVER COUNTY, FLORIDA A-2 AGRICULTURAL TO CITY PDD-PLANNED DEVELOPMENT DISTRICT FOR LAND HAVING A COMPREHENSIVE FUTURE LAND USE MAP DESIGNATION OF LOW DENSITY MIXED USE NEIGHBORHOOD (LDMXN) CONTAINING 3.0 ACRES, MORE OR LESS, LOCATED ON THE CORRIGAN RANCH FOR FIRE STATION 7 OWNED BY INDIAN RIVER COUNTY, FLORIDA; PROVIDING FOR RATIFICATION; PROVIDING FOR CONSISTENCY WITH THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE; PROVIDING FOR ZONING; PROVIDING FOR ZONING MAP; FURTHER PROVIDING FOR SEVERABILITY, CONFLICT, AND AN EFFECTIVE DATE. / **1st Reading and Set the 2nd Reading and Public Hearing for December 7, 2023 at 7:00 P.M.**

Mayor Tyson introduced the Ordinance and Attorney Dill read Ordinance No 2023-28, by title only.

Manager Mathes stated that he would make one presentation for this item and the next because they are related.

This particular piece of property is south, it is basically the furthest south in the City of Fellsmere. It is basically located cross the city boundary off of 98th Avenue to the northeast of the CVS distribution

center is a three-acre parcel bought by the Emergency Division of Indian River County for a replacement for their rural firefighting station number seven. And the city is happy to have another fire station in the City of Fellsmere. Its primary services serve the more rural agricultural areas but obviously will serve within its service radius.

They are in planned development not because necessarily are asking for too many relief for variances but because when the city annexed the large tracts of land in Fellsmere they require development to be done as planned developments except for agricultural type uses. This being a non-Ag use, it was required to be a planned development.

He showed the site plan to the Council on a map. It is the typical design they are using now with a drive around type arrangement which is more convenient for fire trucks. It is a very nice-looking building, there is also an unfortunately a poor drawing of the elevations in the packet, but it is an attractive fire station. And again, they asked for no real relief from the development regulations, but they do have a couple of reliefs that he wanted to go over.

He went directly to the relief being sought and if there is a desire to approve this, he asked for a motion to approve with one revision because they did leave one relief off that they need to add. The relief is the sidewalk relief, the city felt that was no real need to put a sidewalk when that is the only use within miles and there is really nobody walking to a fire station so much. But it is a deferral until another non-governmental site plan is approved on the property. Because he would much rather do these types of extractions and development when he knows what is going on in the larger areas so that he can make the connection to the sidewalk, make sure it is the right width, the right location. They are deferring that until basically something else develops on the west half of the ranch, The condition they left off, it is in the annexation agreement, there is a requirement just as there is for Fellsmere Farms that with any site plan approval or plat they have to donate 10% of that acreage to the City of Fellsmere for future parks and open space. He does not think it is of any value to the City of Fellsmere to obtain at this point in time a point in time, a point three-acre parcel somewhere on the Corrigan Ranch, when the city has no idea how that is going to fit into other developments in the future. And so, with that being said, they would be asking if there is a motion to approve, that is to add a relief for the 10% dedication, and that would occur again at the next non-governmental approval on the property. There are no other special reliefs being granted on this project.

Attorney Dill stated that it is not necessary to grant relief because it does not qualify them to give the city the 10%. It does not fall into that category.

Manager Mathes stated he would rather be safe and put it in there. If it is not needed. It is not going to hurt anybody.

Mayor Tyson opened the Public Hearing and asked if anyone in the audience wished to speak on Resolution No. 2023-28 to come to the podium and state their name and address for the record,

Aaron Stanton, Civil Engineer for the project, he works for MBV engineering and for the engineers of record part of a team, CPZ is the architect who is providing the building design, or the site layout and he can answer any questions they might have on the project.

Hearing no more comments Mayor Tyson closed the public hearing.

MOTION by Council Member Renick, **SECONDED** by Council Member Salgado to adopt Ordinance No. 2023-28 including the relief of the 10% dedication.

ALL AYES:

MOTION CARRIED 5-0

ROLL CALL: AYES: Council Member Herrera, Council Member Salgado, Council Member Hernandez Council Member Renick and Mayor Tyson NAYS: None

ALL AYES

MOTION CARRIED 5-0

Attorney Warren Dill stated that the waiver that they just talked about is supposed to go in the Resolution and not in the Ordinance.

MOTION by Council Member Renick, **SECONDED** by Council Member Salgado to reconsider Ordinance No. 2023-28.

ALL AYES:

MOTION CARRIED 5-0

MOTION by Council Member Renick, **SECONDED** by Council Member Salgado to adopt Ordinance No. 2023-28.

ALL AYES:

MOTION CARRIED 5-0

ROLL CALL: AYES: Council Member Herrera, Council Member Salgado, Council Member Hernandez Council Member Renick and Mayor Tyson NAYS: None

ALL AYES

MOTION CARRIED 5-0

RESOLUTION NO. 2023-50/ A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, APPROVING THE FINAL DEVELOPMENT PLAN FOR A PLANNED DEVELOPMENT BY INDIAN RIVER COUNTY, FLORIDA/EMERGENCY SERVICE DISTRICT FOR FIRE STATION # 7 ON THE CORRIGAN RANCH; PROVIDING FOR RATIFICATION; PROVIDING FOR CONSISTENT WITH THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE; PROVIDING FOR FINAL DEVELOPMENT PLAN APPROVAL WITH CONDITIONS; AND FURTHER PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS AND AN EFFECTIVE DATE. / *1st Reading and Set the 2nd Reading and Public Hearing for December 7, 2023 at 7:00 P.M.*

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2023-50, by title only.

Attorney Dill stated that they need to add relief from the 10% requirement for land to be donated to the city as per the annexation agreement that needs to be added to Section seven of Resolution No. 2023-50.

Manager Mathes stated that the presentation he made before was for both items and he had nothing else to add.

Mayor Tyson opened the Public Hearing and asked if anyone in the audience wished to speak on Resolution No. 2023-50 to come to the podium and state their name and address for the record, hearing no more comments Mayor Tyson closed the public hearing.

MOTION by Council Member Renick **SECONDED** by Council Member Renick to approve Resolution No. 2023-50 including the relief for the 10% dedication.

ALL AYES:

MOTION CARRIED 5-0

- (c) Declare 208 South Mulberry Street as Surplus Property. / *1st Public Hearing and set 2nd Public Hearing for January 4, 2024 at 7:00 P.M.*

Manager Mathes stated this was a 25-foot-wide lot that somehow the city became owner of many years ago more than 20 years ago. When a mobile home was originally placed on the private lots adjacent to the city lot the surveyor must have made a mistake and moved over a lot and resulted in the mobile home being set not on their two lots, they owned but one of their lots and the city's lot. And then subsequent to that there is an addition done that further encroached upon the city lot. The city did not even know they owned the lot but uncovered it by doing ownership searches and the city has been trying to get rid of it for a while. The city's prior method of disposing property had to be amended because the city had created a CRA in that timeframe and state law requires you to dispose of property in a CRA slightly different property outside of the CRA. This is the first property they will be requesting a disposal of that are in the CRA and so it took Attorney Dill, himself, and Maria a little bit to get up to speed on that new state process. This is a public hearing just to declare it surplus at this point, at which time, the city will put an ad in the paper to inform the community that the lot is for sale, and they will offer proposals to us and what they want to do with the land. The city's goal would be to try to work with hopefully an adjacent owner who is hopefully interested in this lot because it has no value to anyone to be honest, except one of the adjacent owners. And he would say the owner with the encroachment the most. The city is going to try to get their money back the best they can, but it does not have as much value as a buildable lot. This is the first to a multi-step process to declare and then sell the property on the open market.

Attorney Dill stated that this is a public hearing determining whether the Council wants to declare it surplus.

Mayor Tyson opened the Public Hearing and asked if anyone in the audience wished to speak on this matter to come to the podium and state their name and address for the record, hearing no more comments Mayor Tyson closed the public hearing.

Attorney Dill clarified that they would have one public hearing which they held right now to declare the property surplus and that was advertised by Maria. They will have a second public hearing for the CRA requirements to make a decision about the sale of the property within the CRA.

Mayor Tyson asked if they would have to recess and open the CRA at the next public hearing. Attorney Dill confirmed and added that they will also have to turn their hats back around and as a City Council authorize the sale again.

MOTION by Council Member Salgado **SECONDED** by Council Member Hernandez to accept 1st Public Hearing and Set 2nd CRA Public Hearing for January 4, 2024 at 7:00 P.M.

ALL AYES:

MOTION CARRIED 5-0

8. MANAGER'S MATTERS: Manager Mathes continued with his matters.

- Denial of FEMA Appeal- They city has until the 4th of January to appeal the denial of the appeal. He thinks it is worth the effort because history shows that when you appeal a denial of an appeal, they usually go into negotiated settlement, it will give them something instead of nothing.
- Rental of City Facilities to For Profit entities- He does not have any issues with that, he just wanted the Council to be aware of that. He does not think there is an issue with insurance, but he will double check with Putnam.
- Parking for Community Center Renters- Susan Adams has been a kind neighbor for years and been tolerating people who rent the City's Community Center parking in her parking lot and sometimes unfortunately, also littering around the cars and her parking lot and her staff has been kind to take care of that. But this last event got a little bit too out of control and when her staff apparently tried to address the owners of the vehicles that were there were met with some rudeness, and the trash was a little higher than normal. The city does not need to put their businesses in that position, particularly for a city rented facility. Some of the things that they are going to look to do is the city is going to direct them more firmly on where parking is, if on street parking is not sufficient, because again, they are right across the street from the Orange Street parking lot, it is only an extra fifty feet walking from Susan's parking lot. The city is going to basically staple the parking guidelines to the approval document for every new rental. And Chief has promised to also ensure that the patrols are on that night do make sure they drive by to see how things are going and that they can be the ones confronting the bad behavior instead of a local citizen or business owner. Another option is that they can also offer condition for community rentals that if they rent the community center and there's trash within X feet of that center after you are done, the city will attribute that trash to their rental, and they will be responsible for picking it up. And if you do not, we will charge you for our services to pick it up.

Susan Adams stated that people that have been renting the community center that have been using her parking lot has not really been a huge deal. The trash that has been left over the years, she has sent her staff out to pick up trash regularly anyway, so they just pick it up and throw it away. What happened this weekend is they had a bunch of Christmas parties and a bunch of offsite catering. They were trying to move back and forth through our parking lot as well to pick up stuff and take it and the people from the baby shower were parking and usually, they park at the far end by the community center. This time because they were so busy, they were parking very close to the building, kind of where staff needed to be. My manager asked one lady if she could move her car or not to park there was for Marsh Landing that was met with much disdain and some unkind words to put it nicely. And she just felt like she needed to let the city know that she does not want her staff getting into some kind of argument with people and then it is becoming a bigger deal than it needs to be. She is exploring the possibility of putting up Marsh Landing tow away signs, which she does not want to do. She has talked to city staff, and she thinks they have a great handle on how to move forward and they are happy to help in any way and they do not want to be in an adversarial stance it just was more to kind of bring the city's attention on what was kind of going on.

Council Member Salgado asked if she ropes off her parking lot for Frogleg. Susan stated they do rope off the parking lot for Frogleg and put up a hand painted Marsh Landing sign. They try not to do that any other time because it is not a big deal, but she could do something similar.

Manager Mathes summarized that staff will be more forceful on directing and where the parking is and have patrols go by when it is rented. He questioned if they would like to move forward with the other option regarding the condition of the trash.

Council Member Renick stated to try only one step at a time. Council Agreed.

- Flood Water Intrusion - other addresses are pending more information-cooperation from the owners/tenants, there was a total of eight home reported with the county's Emergency Operations Center. The EOC mentioned that there may be more if they can get the cooperation from the homeowners to report it.
26 South Bay Street, 36 South Bay Street, 102 South Magnolia Street, 1021 Vernon Street, 1031 West Grant Street, 1043 West Grant Avenue, 229 South Willow Street and 12645 126th Court
They already know about Bay Street, that first block of South Bay is what is called a repeat repetitive loss property. Bob, and he will be having to send a letter to that property owner and other property owners along that block as their in the repetitive loss area to see if there has been any damage and see if they are requesting a claim, because if they are requesting a claim, the city has to do what is called a substantial loss determination. Because if it was substantially damaged, they are not allowed because they are in a flood zone, they are not allowed to replace it. He does not think a little bit of water on their floor is going to cause them to meet that threshold, but they do need to follow up on that.
- Vocational Space Request - FJV donations - it is a state funded organization that provides vocational education. It is the old fashioned vocational, electricians, A/C's, plumbers, welders, and other kinds of things. They asked him if they could find a two thousand square foot minimum four thousand square foot metal building in Fellsmere so they can bring vocational training to the residents. Fellsmere Farms is going to be providing an application for a 200-acre commerce park out there at the stop sign where the shrimp farm is at and they have the same condition that the Corrigan's have that when they develop, they have to donate 10% of the land to the city for certain uses. And wanted to get the Council's support for when this happens to request, instead of the 10% of the two hundred acres, maybe request part of that and then convert the rest of it into FJV having to build the city a building for this vocational training. He wanted Councils support to start conversation with the Farm regarding this building. Council Agreed.
- CDBG ED Grant to Support F392 Surf Park- A Surf Park is potentially going out at the Fellsmere 392 area behind Dairy Queen they have negotiated a deal. It has not been finalized yet. He is excited about this because it will draw a lot of people to Fellsmere it also blends in with their outdoor recreation type mentality. It brings the outdoor adventures to Fellsmere and brings people to town. They can hold competitions there. It would be a manmade surfing lagoon. There is one proposed in Tampa, one proposed in Orlando, one was proposed in Fort Pierce and West Palm. He would like an opportunity to start a conversation, not necessarily commit the city, but start a conversation with the Community Development Block Grant people. He would like to go after an economic development grant to soften their infrastructure costs, build the road, build their stormwater, and build their water and sewer which all would then be owned by public bodies. They would maintain them obviously, but the city would have to be the owners. He will have the surf park representative give a presentation in the near future. Council agreed to continue conversation.
- Joint BOCC / City Council Meeting, City Hall Auditorium -January 30th from 1-3p (draft agenda attached) – Council Agreed on the time for the joint meeting.
- Joint FWCD/City Council Meeting on Stormwater – He still does not have a date; he will keep Council updated.
- Request for Letter of Support for Brightline Station in Ft. Pierce (attached)- Council Agreed to send the letter of Support.

There following are announcements of upcoming events and meetings:

- Fellsmere Cleanup -Motivational Edge in January 2024, A date has not been set.
- City of Fellsmere Christmas Lunch -December 14 at Noon in Marsh Landing
- FACT Event 12/15/23 - Santa is Coming to Town
- Wreaths Across America at Cemetery 12/16 at 12
- Form 6 to be Online 1/1/24 - due 7 /1/24 – Please see Maria for any questions.

9. MAYOR'S MATTERS:

Mayor Tyson attended the Chamber of Commerce luncheon and the Council of Local Government meeting. Dr Moore had a presentation and said that everything is going well with the school district. Mayor Hudson from Fort Pierce called him for support on the Brightline and he said he would bring it to Council and get it back to her. He stated that Stuart is also in contingent to this but to the City of Fellsmere's benefit Fort Pierce is closer.

He had to make a reservation today over at Marsh Landing restaurant for forty-five people on the third of January for the installation dinner of the Treasure Coast Council of Local Governments officers for next year and invited all Council.

10. COUNCIL MEMBER'S MATTERS:

Council Member Herrera- He had no matters.

Council Member Salgado – She had no matters.

Council Member Hernandez – She had no matters.

Council Member Renick – He stated that he was not able to attend but they had the final Florida League of Cities legislative committee meeting November 30th and they approved the two suggestions that were presented and will be sent to the state legislature to be considered.

11. CITY ATTORNEY'S MATTERS: Attorney Dill stated he had no matters.

12. NEW BUSINESS:

- (a) **ORDINANCE NO. 2023-33/** AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN AND FUTURE LAND USE MAP SERIES AS REQUESTED BY MARION ESTATES; AMENDING THE TEXT OF THE COMPREHENSIVE PLAN CHAPTER 1. FUTURE LAND USE ELEMENT, GOAL FLUE A. LAND USE OBJECTIVE FLUE A-3 INFILL DEVELOPMENT AND REDEVELOPMEN, POLICY FLUE A-3.2. OVERLAY DISTRICT BOUNDARIES AND CHAPTER 1. FUTURE LAND USE ELEMENT GOAL FLUE B. FUTURE LAND USE MAP OBJECTIVE FLUE B-5 GARAFOLLO; FURTHER AMENDING THE FUTURE LAND USE MAP TO ADD 8.21 ACRES MORE OR LESS AS CR512 OLD TOWN OVERLAY DISTRICT; PROVIDING FOR RATIFICATION; AUTHORITY; COMPREHENSIVE PLAN TEXT AND MAP AMENDMENT; TRANSMITTAL PHASE; ADOPTION PHASE; TRANSMITTAL OF DRAFT PLAN AMENDMENT AND FINAL ADOPTION DOCUMENTS; COMPILATION; SEVERABILITY; CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. / *1st Reading and set 2nd Reading and 1st Public Hearing for January 4,2024 at 7:00 P.M.*

Mayor Tyson introduced the Ordinance and Attorney Dill read Ordinance No 2023-33, by title only.

Manager Mathes stated this is the Marian Estates project which again is the seventy-eight acres lying south of 512 west of the Myrtle properties. It was annexed some years back with a comprehensive plan amendment that contains kind of a summary of certain of the development aspects of annexation agreement and place them in the comp plan. And one of the things they placed in the comp plan was the total number of allowed units and breakdown of the units between townhomes and single families. Applicants requesting an amendment to increase those units by seven from 325 to 332, and then the more aggressive one is to change the split from townhomes and single family that used to be like 156 townhomes, they reduced it to 105 which means they are increasing the single family by that same forty units. What that does is it puts more pressure on squeezing things in, because a townhome is much smaller than a single-family lot. And he just wanted to make sure the Council were clearly aware before they approved the comp plan. He showed a picture to the Council of their site plan approximately as it exists today. There are a lot of 40-foot-wide lots, the city has never approved 40-foot-wide lots, when he came to Council earlier, they all expressed that they could support the project. And he is not asking them not to support the project, he just wants to make sure they clearly understand what they are supporting because they have never done 40-foot lots. What he did make sure was that they had lots of first come first serve parking. They added .25 spaces per unit for the guests, and they spread them around the property.

This is just the comp plan, and it is just to adopt the text amendments. It says 105 townhomes used to say 145 townhomes plus or minus the 227 was reduced by those forty plus the additional seven that they are asking. This was down to around 180 instead of 227. So that is the one change they are making. And then the other change they asked to get rid of the LED standards, he is recommending they do that. He reminded them that they had a conversation about getting rid of the affordable housing component because it was their goal to provide all these units at less than \$300,000. That is still his intent, but the city cannot sit here today and guarantee he is going to deliver that. And if the city deletes the affordable housing complex, and now he is selling these at 325 the city would have lost

the opportunity to get 10% of these as affordable. It was originally 320 units and now they are adding twelve units, and they are splitting from 145 townhomes to 105 townhomes. He recommended putting the affordable housing back because so much time has passed, and because they just cannot tell the future, he is beginning to think it might be better to keep that in.

Mayor Tyson asked what is the price difference between the townhouses and single family. Manager Mathes responded that he does not have that answer and that most likely Ryan Homes will be setting those prices. Originally, he was going to do \$270,000 for the homes and less than \$250 for the townhomes.

Council Member Renick asked if there will be a reduction in the amount of retention of open space. Manager Mathes responded no, none of that has changed. He stated that if this development goes through as proposed what is the most heavily wooded nearly 80-acre parcel in the heart of the city is going to be completely denuded. He expressed some concerns about the process and how it can affect the residents that live around this development. He is concerned where they consider limited conservation elements as part of their land development ordinances, and they cannot have any measure of conservation at all on this eighty acres when it is almost virtually all naturally wooded most of habitat. And it is going to be just a complete and absolute moonscape when it has done. Manager Mathes responded that they will not be looking at a denuded area because one of the requirements is a buffer and that buffer is an infrastructure requirement. It will still be denuded, but the people will not be seeing it.

Council Member Renick asked if they will be reducing the size of the lakes where they have more than enough stormwater to reduce that footprint and put in more housing footprint.

Manager Mathes responded that there are two things that generate a lake on a residence development, obviously, stormwater and the second is the fill. He does not know because he has not gotten the site construction plans whether these lakes are sized for just stormwater, for stormwater plus because they need more fill.

Manager Mathes stated that this item was about the comp plan amendment and whether or not Council wants to direct any changes to staff on those two issues, the affordable housing, and the increase in units by twelve and the change of split between townhomes and single family.

Mayor Tyson asked if they will still be leaving the room for a fire station. Manager Mathes responded that they are and that the fire station is part of their seven or eight acre commercial.

Attorney Dill asked Manager Mathes that he noticed on the fire station site plan, they are only allowing one acre. Manager Mathes stated that it is closer to two acres and the reason is because they do not need stormwater and they were also directed to make sure the fire district supports this lot.

Council Member Renick stated they could at least add back the condition of the affordable housing. The council agreed to add that back as a condition.

Manager Mathes asked how about the split and count of units.

Council Member Salgado asked what the count was before and what are the sizes. Manager Mathes responded from 320 to 332 total and 145 towns to 105 towns. He stated that he does not have a concept plan from the original. He cannot tell the Council how many 50-foot lots 60-foot lots or forty foot lots they proposed because they have not given him a concept with the original plan. Because they have been going down this path the whole time.

Council Member Salgado stated that she would rather know than have a decision made because it all depends on that.

Manager Mathes asked Council if anybody else would like to see the concept plan on the current comp plan to see what it is going to look like. All the Council agreed.

Manager Mathes stated that he will ask them to generate a concept plan.

Attorney Dill stated that this is a complex development. There are a lot of moving parts here, Mark was asked to put this on the agenda, it is not something he just decided he wanted to do. This is only one part of what will come before Council. They want to amend the annexation agreement, they want to change this to a development agreement, there are going to be three or four more documents that are going to have to come to get this approved. And his concern in talking to Mark and his concern as well was that, selfishly, he does not want to be in a position of having to defend an approved Comp Plan Amendment when the Council decides there's other things that they want and that they do not want to approve. His preference was really that Council would have all the documents in front of them at one time to look at, so they do not have any issues on what is being approved.

Manager Mathes stated that this first reading, public hearing with the comp plan, there's 45 or 60 days before it comes back for the second hearing. And what they have always done is they do not do the second hearing of the comp plan until the other documents catch up. The council will have an

opportunity to see the entire package with all the documents before the second hearing if this Comp Plan happens. Just because Council approves it on transmittal does not mean they have to approve it on adoption.

Council Member Salgado agreed with Attorney Dill, and she would prefer to have all the documents before approval. Mayor Tyson agreed.

Manager Mathes stated that he will follow the direction of Council. He just wanted to clarify that when they have projects that have comp plan amendments, that Council does not want to see them until they are also seeing the development agreement, the preliminary development plan, and the rezoning ordinance at the same time. What that means to the applicants is the Council is forcing them on a three-month delay, because comp plans have a longer approval timeframe than zoning and preliminary plan.

After Discussion Council agreed to bring this item back. Manager Mathes stated that what they are going to do is bring this item back once he gets the second concept of the original comp plan. So, they compare, and they will have the draft development agreement, it is not going to be on your agenda to approve, but it is going to be an advanced draft development agreement. They already got the strikethrough and underlined the annexation done. They will have all the pieces they need. They will not be on the agenda at the same time for approval, but they will see them all, they are very advanced, both the applicant, the attorney and your city manager have looked at them all numerous times. And so it may be in January, maybe February but at this point they will not take action on the first reading.

MOTION by Council Member Salgado **SECONDED** by Council Member Herrera to table the first reading of Ordinance No. 2023-33 to January 4th, 2024 at 7pm at City Hall, 22 S. Orange Street, Fellsmere Florida.
ALL AYES: **MOTION CARRIED 5-0**

(b) Recommendation regarding request for Abatement of Code Enforcement Lien for 12955 100th Lane.

Manager Mathes stated that this is a code case, from 2016 for a dilapidated property on 100th lane that had a carport on it when it used to be part of a larger property. The adjacent property was a single-family home, somehow the lots got split, single family home became owned by someone else, the carport became owned by Pacific Financial, LLC. Somehow, over time, Pacific Financial had changed their address and were not checking the address of record that the city had for them through the tax collector's office. There may have been some notice issues early on, he thinks the city ended up having to post the property at some point which is least efficient way to post a property, particularly a vacant piece of property. But nevertheless, it went through and got approved, the city followed all the rules, and the city had a judgment, and no action was really taken on the property. Again, it might be just because they weren't aware of it notice wise but the city ended up foreclosing on the property at Council's direction the city became the owner of the property and the value of that property was not sufficient to cover the value of the lien that had been placed and the lien was equal to the cost of the case plus the daily interest in fines to the date of foreclosure for prior to the date of foreclosure at the date of the court filing. After becoming owners, they had a balance that was still do the city and what happens is the lien stays in place. And when other property owned by this entity is sold, the city has a claim against the proceeds of that sale. And one of those properties was sold a while back and the city did receive through negotiation \$42,000 Plus towards their lien amount, the total lien amount was \$147,000 and they still have a balance do of about \$105,000 on that amount. The city is selling the parcel at some point staff will probably be coming to the Council for surplus designation, probably selling that back on the market, so there will be some gain from that sale. He estimated probably 20 to 30,000. If they were to include that in there at \$20,000, there would still be 85,000 owed on the lien. The city often abates requests, sometimes the city abates requests to much less. This entity may still have in fact does still have two properties that the lien could still apply to if that was the Council's direction. Pacific Financial though, has asked for an abatement request, which the city always offers. And the gentleman here from Pacific Financial is in the audience to speak as part of this request. And they did offer the city \$1,000 to release the lien.

Michael Stiles with Pacific Financial stated that he has managed properties in this county for 25 years and they have had numerous code violations on properties that they have taken over and managed, typically through foreclosures managed a lot of properties for banks over the years. Quite a few in Fellsmere and their policy has always been to immediately clean up any code violations or problems

with the property, regardless of who caused them, whether it be junk vehicles, tall grass, unsafe structures, they would do it immediately and then they would contact code enforcement and let them know they have taken care of this problem and clear up the old code cases and liens. This was a unique property because it was part of a single-family home with a lot next door that had a pole barn built on it. When the property was sold, this was 15 years ago, the home was sold but the lot next door was not needed with the home, and they ended up with their own piece of surplus property that they could not do anything with. They did maintain it for many years, about six or seven years, but that particular neighborhood, as most of you probably know, it was very bad. And they got to a point where his lawn guys would not go in that neighborhood anymore, because there was so much crime and vandalism on that street. They made attempts to donate that property to a couple of different entities like Habitat. They even talked to the previous city manager years ago about giving it to the city, they just wanted out of it. They did have communication with the police department in Fellsmere on a couple of occasions. Time went by and they tried to sell it and unknown to him code violations started to ensue on it. And they were being sent to a property office address that they had in Fort Lauderdale. It had been moved actually two times since then. He never got notice of the violation or the impending liens. Had he known about it, they would have taken care of it. He also had a family member that was ill, so I was distracted for like two years.

They had just a few properties left in that entity. And one of them was sold and they worked with his attorney Fred Kretschmer and the county attorney, and they had some proceeds from that sale. And they came to the city and said can they work out an agreement on this property and they will give the city some of the proceeds and see if they can abate the ongoing fines and settle the matter. They made a settlement amount, and it was \$42,259, pretty significant for a lien with no with no hard costs on it. The city did end up getting a deed to the property through a foreclosure. And Pacific Financial at the time when that was happening, had been under the impression that that was going to settle the matter and they would close it out and be done with it. But at the last minute, the city said no, they were not going to release the lien, but they will release the one property and they were kind of in a bind and they said okay, we will accept that, and they did. Pacific Financial is currently shut down. It is not an operation anymore. It does have two properties in it. They are in Indian River County, both outside of the city limits of Vero Beach. They are single family lots they are unimproved. They do not have a lot of value. And he would like to dispose of those lots and clean up anything that is left remaining in Pacific Financial. He has requested that the city release the lien, the code violations have been closed out. And he understands there is paperwork involved and things about that and that is why they made an offer of \$1,000 to settle it.

Attorney Rhodeback stated that he has been dealing with this file for about three and half to four years. It is correct that this property is no longer a code violation. And the reason is because the city took it over. Because for a four-year period, there was a dilapidated structure, the lawn was not being maintained and there was trash and debris all over the place. The only reason it got cleaned up is because the city had to take it back in a foreclosure action and do the work. This is not just a case where there are not out of pocket costs for the city, they are actually quite substantial out of pocket costs for the city, not only in attorney's fees, but the appraisal fees associated with getting a deficiency judgment in court.

Now, with respect to the notice, issue, the notices that we are sent or sent to the address that was listed with the Department of State for the State of Florida, that that address is still the same address to this very day, as far as the State of Florida is concerned. And whether those notices were actually received during the code enforcement, he can assure them during the code foreclosure case, is that they are not allowed to get a deficiency judgment unless they obtain personal jurisdiction over a defendant. They do not have the ability to post an order to serve notice on people in a litigation matter. They have to personally serve individuals in litigation matters in order to get a money judgment. Whether it was Mr. Stiles who was served or not, but somebody accepted service on behalf of Pacific Financial.

He stated to the Council that they have a judgment call to make today, which is an abatement, the abatement being offered was \$1,000. The decision is ultimately up to counsel whether to accept \$1,000. But he did want to let Council know what that entails. There are two properties out there owned by Pacific financial, those two properties have relatively low value, the Property Appraiser deems both of those properties together in the amount of approximately \$55,000 They are not encumbered by anything. In fact, Council today could go after those properties, if they so choose. Several months ago, they were contacted by Fred Kretschmer and said that these properties have no value whatsoever and will the city take \$1,000 to release its lien against Pacific Financial. City Attorney did some investigation work and they noticed that a tax deed sale was upcoming. And they also noticed the value of the property because these properties have no value then they are surely going to let this

property go away at the tax deed sale. They redeem the tax deeds certificate, and he is a big believer in listening to people what they say by what they do. And they redeemed a tax certificate because they believed in his opinion that that property had at least some value otherwise they would have let it go back to the county. The city does frequently grant abatement requests, but the ultimate decision is up to the Council. There is nothing encumbering Council from going after more.

Manager Mathes asked Attorney Rhodeback if he had to put an estimate on the legal expenses to date on this, where what ballpark would he have. Attorney Rhodeback stated it was \$4700 in attorney fees.

Manager Mathes stated that between demolition and special master costs was around \$15,000. The max \$20,000 that he cities into it cost wise. And they have paid \$42,000 plus.

Council Member Renick stated that after what he has heard today, he thinks that is enough.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Herrera **SECONDED** by Council Member Hernandez to approve the Abatement of Code Enforcement Lien for 12955 100th Lane and accept the \$1000 to release the lien.

ALL AYES

MOTION CARRIED 5-0

(c) Approval of Indian River County American Rescue Plan Agreement.

Manager Mathes stated that this is the document that will allow the county to give the city \$3.413 million to combine with the city's \$2.8 million grant so that they put the broadband RFP back on the street. The city is now offering \$6 million to improve broadband west of 95 instead of three million. The county has not actually acted on this yet, so they have two choices. They can approve as is and if the county commission makes changes they can reconsider or they can table this issue to the next meeting and at that time the county will have acted and then they can see if there are any changes the Council wants to do.

Attorney Dill recommended to wait for the county.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Renick **SECONDED** by Council Member Salgado to table the Indian River County American Rescue Plan Agreement to January 4th at 7pm or thereafter at City Hall, 22 S. Orange Street, Fellsmere, Florida.

ALL AYES

MOTION CARRIED 5-0

(d) Award Historic District Walking Tour Proposal to A Walk in the Past Productions, LLC and Applied Webology FL, LLC.

Manager Mathes stated that this is the walking tour they have talked about a few times in the past, the city has a small matching grant from the State of Florida Department of Historic Preservation, to give the city \$50,000 to create a both hardcopy and digital version of a walking tour. And the only proposal the city got was from the local Rich Votopka. "A Walk in the Past Production" is Rich Votopka. and he is partnering up with a web firm "Applied Webology FL, LLC" and together they were a proposal as a single entity, just separate companies. And if you agree to award the proposal, then Attorney Dill and he will have to draft a contract with each of these entities. And they will bring that contract back to you hopefully by January 4, so that they can get them started because this has a hard deadline of June 30, 2024, and so time is of the essence here. That is why they made sure this was on the agenda now. He is excited about it and Rich Votopka is going to be great to do this. He is going to focus mostly on North Broadway with this a few other homes. And they will negotiate those specific properties that are going to be part of this when they get into the contract negotiations.

Mayor Tyson stated that Rich Votopka is the city's historian. He has done a lot of research on all of the historical placards that are got around town, he wrote most of those. If anybody were going to do this, he was the guy that is most qualified to do it, so he recommended him would recommend.

Manager Mathes stated that the web firm is the same firm that wrote the police's app to city's police app. And has been happy with that app and that is a good testimonial for the web people.

Attorney Dill stated that the proposals that came in from the two applicants, they kind of joined together to make the presentation jointly, they have asked for two separate contracts, one for each

one and he does not recommend that. He proposed that they have one contract, both parties named in the contract, and they can decide amongst themselves who is going to do what and when. Manager Mathes agreed. The only risk the city has in that is they could deny and walk away, which means the city would have to give the grant back. They can try again in a couple of years. Either way it is okay.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Hernandez **SECONDED** by Council Member Salgado to award the Historic District Walking Tour Proposal to A Walk in the Past Productions, LLC and Applied Webology FL, LLC. with direction to staff for a single contract.

ALL AYES

MOTION CARRIED 5-0

(e) Approval of ARPA Amendment.

Manager Mathes stated this is the quarterly update. Staff identified an additional piece of City Hall technology they were increasing that from 50 to 65,000, because they got the proposal back for the technology. But they realized there is a piece of equipment that is not in that proposal, and they would like to increase the city all technology to 67,000 and I would reduce the Senior League soccer field rejuvenation.

What they do on a quarterly basis, they update this to a variety of different things in this particular update they have spent to numbers are always being updated each quarterly update. They added some money into the 97th to purchase that one lot outside because the city wants to resell that lot and the city cannot resell it if they buy with the grant money. They only need the front yard, but the owner will not sell just the front yard, so the city has to buy the whole house. They added a new item to purchase lots along the Kentucky Stormwater Greenway, these are owned by the State of Florida. They went ahead and added back in heavy Public Works heavy equipment trailer just because it is an important thing. He is actually looking to buy some heavy equipment and so having a trailer to move it around might be a good idea.

And then they just reduced ARPA funding for those items that were done, because some of them had been corrected.

The city has a \$2.8 million allocation and right now their list adds up to a little over \$3 million. Between now and the end of summer, they have to cut \$200,000 out of this list. And the way they do that is by identifying projects that are just not going forward. They will be making a few more changes between now and when it gets finalized after summer, there will be no more changes because technically you have to have an obligated meaning under contract by the end of December of 2024. So obviously the list has to stop moving at some point. And again, things are working as they plan, they are adjusting as they go along. They are hitting the things that are important to staff and Council and he is happy with what they have done with the 2.8 and what they plan to do with it.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Renick **SECONDED** by Council Member Herrera to approve the ARPA Amendment with the adjustment of \$2,000 into the city hall technology fund.

ALL AYES

MOTION CARRIED 5-0

13. ADJOURNMENT:

There being no further business Mayor Tyson adjourned the meeting at 9:46p.m.

These minutes were approved by the City Council of the City of Fellsmere this ____ day of January 2024

Maria F. Suarez-Sanchez, CMC, City Clerk
CO20231206MINUTES.DOC



FELLSMERE

POLICE DEPARTMENT

November 2023

	Monthly Total	Annual Total	Monthly Average
911 Hangup/Open line	26	78	26.00
Alarm	13	20	6.67
Animal Incident	2	9	3.00
Area Check	424	1583	527.67
Assault	0	0	0.00
Assist	28	88	29.33
ATV/Dirt Bike	1	5	1.67
Burglary Auto	1	2	0.67
Burglary Residence	0	0	0.00
Burglary Business	0	1	0.33
CFS Fax	2	5	1.67
Civil	4	18	6.00
Crash Report	5	17	5.67
Criminal Mischief	0	2	0.67
DAV/Traffic Hazard	0	0	0.00
Death	0	0	0.00
Disturbance	10	28	9.33
Drug Incident	2	3	1.00
Follow Up	11	33	11.00
Found Property	0	1	0.33
Fraud	1	1	0.33
Larceny	1	1	0.33
Liquor Violation	0	0	0.00
Lost Property	0	3	1.00
Miscellaneous	66	212	70.67
Motor Vehicle Theft	0	0	0.00
Noise Disturbance	3	18	6.00
Parking Violation	1	7	2.33
Recovered Stolen Vehicle	0	0	0.00
Robbery	0	0	0.00
Runaway/Missing	2	4	1.33
Search	1	12	4.00
Shoplifting	0	1	0.33
Suspicious Incident	17	36	12.00
Suspicious Person	4	10	3.33
Traffic Incident	18	90	30.00
Transport	3	5	1.67
Trespass	4	10	3.33
TOT	3	13	4.33
Verbal Warning	18	84	28.00
Warrant Arrest	1	3	1.00
Training	1	15	5.00
CommendationAwards	0	0	0.00

TRAINING:
Reid Interviewing - 6hrs.
Ofc. Jones

Respectfully Submitted,

Keith Touchberry
Chief Keith Touchberry
Date: 12.5.23

MARK MATHES
CITY MANAGER

PUBLIC WORKS

CITY OF FELLOSMERE



PUBLIC WORKS DIVISION

NOVEMBER 2023

MONTHLY REPORT

Andy Shelton
Director of Public Works

November 2023

City of Fellsmere
Public Works
Total Monthly Hours

Assignment	Hours
Administration	23.0
Training	0.0
Edging	0.0
Weedeating	26.0
Blower	0.5
Weeding	2.0
Sprinklers	0.0
Mowing	50.0
Ditchwork	7.0
Catchbasins	8.5
Alleyways	3.0
Bushhog	70.0
Backhoe	0.0
Grading	65.5
Roadwork	85.5
Potholes	7.0
Storm Debris	15.0
Trash P/U Roads	10.0
Trash P/U Parks	123.0
Park Maintenance	132.5
Assist PD	0.0
Assist WD	0.0
Street Cleaning	4.0
Equipment Maintenance	47.5
Cemetery	0.0
Shop/Parts/Supplies	10.0
Building Maintenance	18.5
Water System	0.0
Sewer System	0.0
Other	45.5
Paid time off	98.5
Total Hours	852.5

Public Works Director
Andy Shelton

November 2023

City of Fellsmere
Public Works
Total monthly Hours

Employee	Administration	Training	Edging	Weedeating	Blower	Weeding	Sprinklers	Mowing	Ditchwork	Catchbasin	Alleyways	Bushhog	Backhoe	Grading	Roadwork	Potholes	Storm Debris	Trash P/U Roads	Trash P/U Parks	Park Maintenance	Assist PD	Assist WD	Street Cleaning	Equipment Maintenance	Cemetery	Shop/Parts/Supplies	Building Maintenance	Water System	Sewer System	Other	Paid time off	Total Hours
Tommy	4.0	0.0	0.0	18.0	0.5	0.0	0.0	20.5	0.0	0.0	0.0	0.0	0.0	0.0	7.5	0.0	2.0	0.0	78.5	0.0	0.0	0.0	0.0	6.5	0.0	0.0	0.0	0.0	0.0	14.5	0.0	152.0
Ivan	4.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	6.0	3.5	3.0	0.0	0.0	4.5	30.0	2.0	5.0	0.0	0.0	14.0	0.0	0.0	0.0	12.0	0.0	10.0	10.5	0.0	0.0	0.0	48.0	152.5
Vinny	3.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	61.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	27.5	35.5	127.5
Guillermo	4.0	0.0	0.0	4.0	0.0	1.0	0.0	0.0	1.0	0.0	0.0	29.0	0.0	0.0	27.0	0.0	0.0	0.0	0.0	71.0	0.0	0.0	4.0	11.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	152.0
Jesus	3.5	0.0	0.0	4.0	0.0	0.0	0.0	25.5	0.0	0.0	0.0	0.0	0.0	0.0	2.0	0.0	0.0	10.0	41.5	8.5	0.0	0.0	0.0	11.0	0.0	0.0	0.0	0.0	0.0	3.5	0.0	109.5
Lencho	4.0	0.0	0.0	0.0	0.0	1.0	0.0	4.0	0.0	5.0	0.0	41.0	0.0	0.0	19.0	5.0	8.0	0.0	3.0	39.0	0.0	0.0	0.0	7.0	0.0	0.0	8.0	0.0	0.0	0.0	15.0	159.0
Totals	23.0	0.0	0.0	26.0	0.5	2.0	0.0	50.0	7.0	8.5	3.0	70.0	0.0	65.5	85.5	7.0	15.0	10.0	123.0	132.5	0.0	0.0	4.0	47.5	0.0	10.0	18.5	0.0	0.0	45.5	98.5	852.5

Director of Public Works
Andy Shelton

Status of Developments through September 11, 2022

DEVELOPMENT- thru 12/14/2023	STATUS	NOTES
Willow Street Garden Site Plan Amendment	Abandoned	This garden is no longer in use.
Parabel	Abandoned	Disolution Bankruptcy
10 N. Myrtle - Tiny House Builder	Application	Application under development- updating site plan to accommodate new construction area.
30 S. Cypress	Application	ROW Abandonment
81 N. Broadway - Yolanda Fruit Stand	Application	Application under development to convert to permanent food truck
Chuckaree/Singh Mesa Park	Application	Separate Church from motocross. Carry forward requirements from prior approval. Awaiting RTCI approval.
City Hall	Application	Minor Amendment for Band Shell and Parking improvements. Under development.
Hickory/NY Pocket Park	Application	Directed by Council and part of CDBG paving grant. Application under development.
Meadows Park	Application	Application under development.
North Regional Lake/Train Village	Application	Application under development.
Serendipity Investments - Overnight accommodations	Application	Application under development for townhouse and overnight accommodations.
Taco Mobile	Application	Owner has changed Scope- applicant to submit building elevations and site plans
Florida Shrimp Company	HOLD	Reorganization Bankruptcy
12 N. Elm - Retail Conversion	Post Approval	Singature on approval docs required
125 N. Broadway - Delicias Magi, Inc.	Post Approval	Alley ROW Dedication still required- spoke w applicant on 3/17/23 to sign ROW dedication/ easement dwg.
12645 CR-512 ALMANSA	Post Approval	To expand allowable uses
36 N Myrtle Bait Shop	Post Approval	Required HC Space and landscaping required
		Code Enforcement for failure to install required landscaping.
44 N. Pine - TCCH Clinic	Post Approval	Donation of alley ROW required at request of City. Fees due from subsequent due diligence research.
6 S. Mulberry Street (Food Truck Lot)	Post Approval	Impact Fees & Stormwater Impact Fee due
Antiqua Stone – Aluminum Products Extrusion	Post Approval	LA installation and drainage improvements now required due to activity.
Buffer Preserve RV Park (fka Aldea)	Post Approval	Site work and clubhouse under construction. Signal payment still due -will hold CO until resolved.
D & L Foti Administrative Site Plan	Post Approval	Donation of ROW required at request of City.
Fellsmere Fire Station #7	Post Approval	
Florida Gas Transmission	Post Approval	Code enforcement for dead landscaping.
FWMA Boat Ramp 1	Post Approval	Code enforcement for dead landscaping.
Javier Lime Street Administrative Approval	Post Approval	No issues
O'Reilly Auto Parts	Post Approval	Site Construction plan nearing approval.- awaiting docs from WD for access easement - Sidewalk Easement
Raceway	Post Approval	Future Code issue w/ existing Landscaping/ Assumption Agreement(s)
RoEd Access	Post Approval	No issues
Sonrise	Post Approval	Assumption Agreement required for new owners. Working through landscape and drainage issues.
TESLA Charging Station 12950 CR512	Post Approval	Construction Permit issued- TESLA Stations are installed- other code issue remain on site
Tractor Supply	Post Approval	Completed- check landscaping in near future for code compliance
6 N. Pine church	Post Approval	site modification implemented revised orginal approval related to stormwater- no connector to bldg.
6 S. Oak (Gas Station)	Post Approval	Code Enforcement. Missing landscaping.
102 Terrace- NEW STORAGE FACILITY - Redtail	Pre-Application	Annexation and development plan approval for new storage fac.
97th Street- NEW STORAGE FACILITY- Redtail	Pre-Application	Development plan approval for new storage fac.
Fellsmere Feed and Supply	Pre-Application	Application required to legalize expansion.
Fellsmere Fish Camp	Pre-Application	Phased implementatino of retail building and overnight stay cabins
Site Plan Modification- CR-512 Laundromat	Pre-Application	Revision required to allow for outdoor stoage and sales.
Willow/ CR-512 Catholic Charter School	Pre-Application	Possible new charter school on NE corner of Willow/CR-512
Operation Hope	Public Hearing	Finishing Final Docs To expnd allowable uses- new phased landscaping plan done/ Complete conditions of appvl.
Revelation Truth Church International (RTCI)	Public Hearing	To legalize church use. Ready for public Hearings.
32 N Broadway - New Site Plan w/ Parking Lot	Under Reivew	Awaiting final docs for Public Hearing
Benchmark Genetics	Under Reivew	Application to expand shrimp larval production.
Brown Food Truck	Under Reivew	Awaiting final docs for Public Hearing
CR-512 Storage and Maintenance Building	Under Reivew	Preparing final docs for PZ/CC - WD needs updated forms/ info
Corrigan Mine	Under Review	Revise for added site area. Site Construction Plan approval pending IRC ROW Permit.
El Ranchito	Under Review	Legalize unpermitted berry buying use and site variations from prior approval. Pending Applicant Response.
F392 Preserve	Under Review	AA Amendment, Comp. Plan, Rezoning, Preliminary Development Plan and Preliminary Plat under review.
Legacy Landing- Wesley Mills and Assoc.	Under Review	New 320 unit apartment market rate complex. Awaiting Applicant resubmittal.
Marian Estates	Under Review	AA Amendment, Comp. Plan, Rezoning, Preliminary Development Plan and Preliminary Plat under review.
PODS Storage Facility	Under Review	Annexation, FLUA, Rezoning and Development Plan under review.
SLP Tractor Services	Under Review	Retail building w/ assoc. outdoor parking. Awaiting vacation of California Ave. and response from Applicant.

City of Fellsmere City Council
Agenda Request Form

Meeting Date: January 4, 2024

Agenda Item No. 12(a)

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> CONSENT AGENDA

<input type="checkbox"/> Other: |
|--|---|

SUBJECT: Comprehensive Plan Amendment in support of Marian Estates Planned Development.

RECOMMENDED MOTION/ACTION: Conduct first reading and set first public hearing for February 1, 2024.

Approved by City Manager Mark Walker **Date:** 12/28/23

Originating Department:	Costs: Funding Source: Acct. #	Attachments: Ord. 2023-33 Comp Plan Draft Concept Plan Draft Concept Plan w/o Comp Plan Draft Development Agreement Draft Annexation Agreement
Department Review: <input checked="" type="checkbox"/> City Attorney _____ <input checked="" type="checkbox"/> Comm. Dev. _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone <u>X</u> or Not applicable in this case ____ Please initial one.

Submittal information: Council meets on the first and third Thursday's of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

Developers of a 78 acre parcel on the south side of CR512 west Myrtle Street are requesting a text amendment to the Comprehensive Plan to increase units from 320 to 332 and to change the mix of units from 152 Townhomes and 168 single-family homes to 105 townhomes and 227 single-family homes. The Amendment also adjusts the boundary of the overlay district along CR512 to include the frontage of this project into the overlay district.

Attached for information purposes are the following additional documents:

- Preliminary Development Plan (PDP) – assuming approval of Comp Plan (current version);
- Concept Plan – assuming no Comp Plan amendment is approved;
- Draft Development Agreement – based on PDP; and
- Draft Amendment to Annexation Agreement.

**ORDINANCE
NO. 2023-33**

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN AND FUTURE LAND USE MAP SERIES AS REQUESTED BY MARION ESTATES; AMENDING THE TEXT OF THE COMPREHENSIVE PLAN CHAPTER 1. FUTURE LAND USE ELEMENT, GOAL FLUE A. LAND USE OBJECTIVE FLUE A-3 INFILL DEVELOPMENT AND REDEVELOPMEN, POLICY FLUE A-3.2. OVERLAY DISTRICT BOUNDARIES ANDCHAPTER 1. FUTURE LAND USE ELEMENT GOAL FLUE B. FUTURE LAND USE MAP OBJECTIVE FLUE B-5 GARAFOLO; FURTHER AMENDING THE FUTURE LAND USE MAP TO ADD 8.21 ACRES MORE OR LESS AS CR512 OLD TOWN OVERLAY DISTRICT; PROVIDING FOR RATIFICATION; AUTHORITY; COMPREHENSIVE PLAN TEXT AND MAP AMENDMENT; TRANSMITTAL PHASE; ADOPTION PHASE; TRANSMITTAL OF DRAFT PLAN AMENDMENT AND FINAL ADOPTION DOCUMENTS; COMPILATION; SEVERABILITY; CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapters 163 and 166, Florida Statutes (2023), provides authority for the City of Fellsmere to prepare and enforce Comprehensive Plans for the development of the City; and

WHEREAS, Section 163.3161 et. seq. Florida Statutes (2023), established the Community Planning Act, which mandates the preparation of comprehensive plans and unified land development regulations for all units of local government; and

WHEREAS, the Florida Legislature has reconfirmed that Sections 163.3161 through 163.3217, Florida Statutes (2023), provides the necessary statutory direction and basis for city officials to carry out their comprehensive planning and land development regulations powers, duties and responsibilities; and

WHEREAS, the Comprehensive Plan has been found to be in compliance by the Department of Commerce; and

WHEREAS, Sections 163.3184 and 163.3187 Florida Statutes (2023), provide authority to adopt this Ordinance amending the Comprehensive Plan; and

WHEREAS, the Planning and Zoning Commission acting as the Local Planning Agency has reviewed the proposed changes to the Comprehensive Plan and held an advertised public hearing on _____, 2024 and recommended to the City Council the adoption of the amendments to the Comprehensive Plan; and

WHEREAS, based upon public hearings and due consideration, the City Council believes that the health, safety, welfare, environmental and general conditions of the citizens of the City are furthered by the amendments to the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. RATIFICATION. The above recitals are hereby ratified, adopted and incorporated herein as legislative findings of the City Council.

SECTION 2. AUTHORITY. This Ordinance is being adopted pursuant to Article VIII, Section 2, Constitution of the State of Florida; Chapter 166, Part I, Florida Statutes (2023), and Chapter 163, Part II, Florida Statutes (2023).

SECTION 3. COMPREHENSIVE PLAN TEXT AND MAP AMENDMENT. The Comprehensive Plan Chapter 1. Future Land Use Element, Goal FLUE A, Land Use Objective FLUE A-3 Infill Development and Redevelopment, Policy FLUE A-3.2 Overlay District Boundaries and Goal FLUE B Future Land Use Map Objective FLUE B-5 Garafolo are amended to read as set forth in Composite Exhibit "A" attached hereto and by this reference made a part hereof, and the Future Land Use Map is amended to add 8.21 acres more or less as CR512 Old Town Overlay District (hereinafter the above Text Amendments and Map Amendment are collectively referred to as "Comprehensive Plan Amendments").

SECTION 4. TRANSMITTAL PHASE. The Comprehensive Plan Amendments as set forth above and in Composite Exhibit "A" are approved for transmittal to the review agencies and the State land planning agency (Florida Department of Commerce) as provided in Section 163.3184 Florida Statutes 2023, within ten (10) working days after the initial public hearing.

SECTION 5. ADOPTION PHASE. The State land planning agency (Florida Department of Commerce) and reviewing agencies have reviewed the Comprehensive Plan Amendments as contained herein and had no comments related to important state resources and facilities that would be adversely affected by the amendments. Therefore, the Comprehensive Plan Amendments as set forth in Section 3. above adopted as of the effective date of this Ordinance.

SECTION 6. TRANSMITTAL OF DRAFT PLAN AMENDMENT AND FINAL ADOPTION DOCUMENTS. The City Manager is directed to transmit a certified copy of this Ordinance and the plan amendment and appropriate supporting data and analyses to reviewing agencies designated under Section 163.3184 (3) Florida Statutes 2023 within ten (10) working days after the initial public hearing and proceed in accordance with the provisions of Chapter 163, Part II, Florida Statutes 2023. The adopted plan amendments, along with all supporting data and analysis shall be transmitted within ten (10) working days after the second public hearing to the State land planning agency (Florida Development of Commerce) and any other agency or

government that provided timely comments. See Section 163.3184(3) (b) 1 and (c) 2, Florida Statutes (2023).

SECTION 7. COMPILATION. The provision of this Ordinance may be incorporated into the City of Fellsmere, Florida Comprehensive Plan and the word “ordinance” may be changed to “section”, “article”, “chapter”, or other appropriate word, and the sections of this Ordinance may be re-titled, re-numbered or re-lettered, to accomplish such condition.

SECTION 8. SEVERABILITY. If any section, part of a sentence, phrase or word of this Ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part. Grammatical, typographical and other like errors may be corrected and additions, alterations and omissions, not affecting the construction or meaning of this Ordinance, the City Land Development Code and the City Code of Ordinances may be freely made.

SECTION 9. CONFLICTS. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of conflict.

SECTION 10. EFFECTIVE DATE. As set forth in Section 163.3184 Florida Statutes 2023, the effective date of this plan amendment, if the amendment is not timely challenged, shall be 31 days after the Florida Department of Commerce notifies the City that the plan amendment is complete. If timely challenged, this amendment shall become effective on the date the Department of Commerce or the Administration Commission enters a final order determining this adopted amendment to be in compliance.

PASSAGE UPON FIRST READING

The foregoing Ordinance was moved for passage upon first reading this ____ day of _____, 2024 by Council Member _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor Joel Tyson	_____
Council Member Fernando R. Herrera	_____
Council Member Inocencia Hernandez	_____
Council Member Gerry Renick	_____
Council Member Jessica Salgado	_____

ATTEST:

Maria Suarez-Sanchez, City Clerk

ADOPTION

The foregoing Ordinance was moved for adoption by Council Member _____ . The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor Joel Tyson _____
Council Member Fernando R. Herrera _____
Council Member Inocencia Hernandez _____
Council Member Gerry Renick _____
Council Member Jessica Salgado _____

The Mayor thereupon declared this Ordinance fully passed and adopted this _____ day of _____, 2024.

CITY OF FELLSMERE, FLORIDA

Joel Tyson, Mayor

ATTEST:

Maria Suarez-Sanchez, City Clerk

I HEREBY CERTIFY that Notice of the public hearings on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the ____ day of _____, 2024, and the first reading was held on the ____ day of _____, 2024, and that the first public hearing was held on the ____ day of _____, 2024, and that the second and final reading and public hearing was held on the ____ day of _____, 2024.

Maria Suarez-Sanchez, City Clerk

**COMPOSITE
EXHIBIT “A”
TO
ORDINANCE 2023-33**

Comprehensive Plan Amendment

**OBJECTIVE FLUE B-5. MARION ESTATES
ORDINANCE NO. 07-25, (AMENDED BY
ORDINANCE NO. 2023-33, ADOPTED ON
_____, 2024)**

The amendment to the Comprehensive Plan Future Land Use Maps as requested by CGV of Fellsmere, LLC is subject to compliance with the following conditions and requirements, which shall run with the land.

1. The density of the residential development on the above-described land shall not exceed 4.71 dwelling units per acre in order to achieve a maximum of Three Hundred Thirty-Two (332) residential units (105 town homes and 227 single-family homes) on Seventy and Fifty-Six One-hundredth (70.56) acres. The commercial activity shall be limited to the Northern Eight and Twenty-One One Hundredths (8.21) acres and no portion of this land shall be entitled to be used for calculating density within the residential development.
2. The owner/developer shall demonstrate prior to site plan approval that all concurrency provisions have been addressed or met including but not limited to: sanitary sewer, solid waste, drainage, potable water, parks and recreation, and transportation facilities, including mass transit, where applicable.
3. The owner/developer shall enter into a development agreement to provide for payment of fees for construction of public facilities and services demanded by the development.
4. Existing roadways shall be used as the basis for forming a “grid” pattern for new developments to the extent practical based upon the geography and typography.
5. Architectural and site designs standards shall provide for a uniform theme or character of the development, with a mix of styles and range of prices to assure access by various income groups.
6. The development will incorporate Green Building (LEED) buildings and the site standards to the extent feasible.

**COMPOSITE
EXHIBIT "A"
TO
ORDINANCE 2023-33**

Comprehensive Plan Amendment

POLICY FLUE A-3.2 – OVERLAY DISTRICT BOUNDARIES

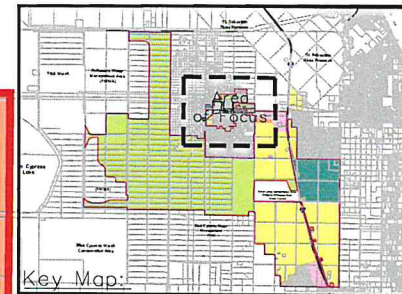
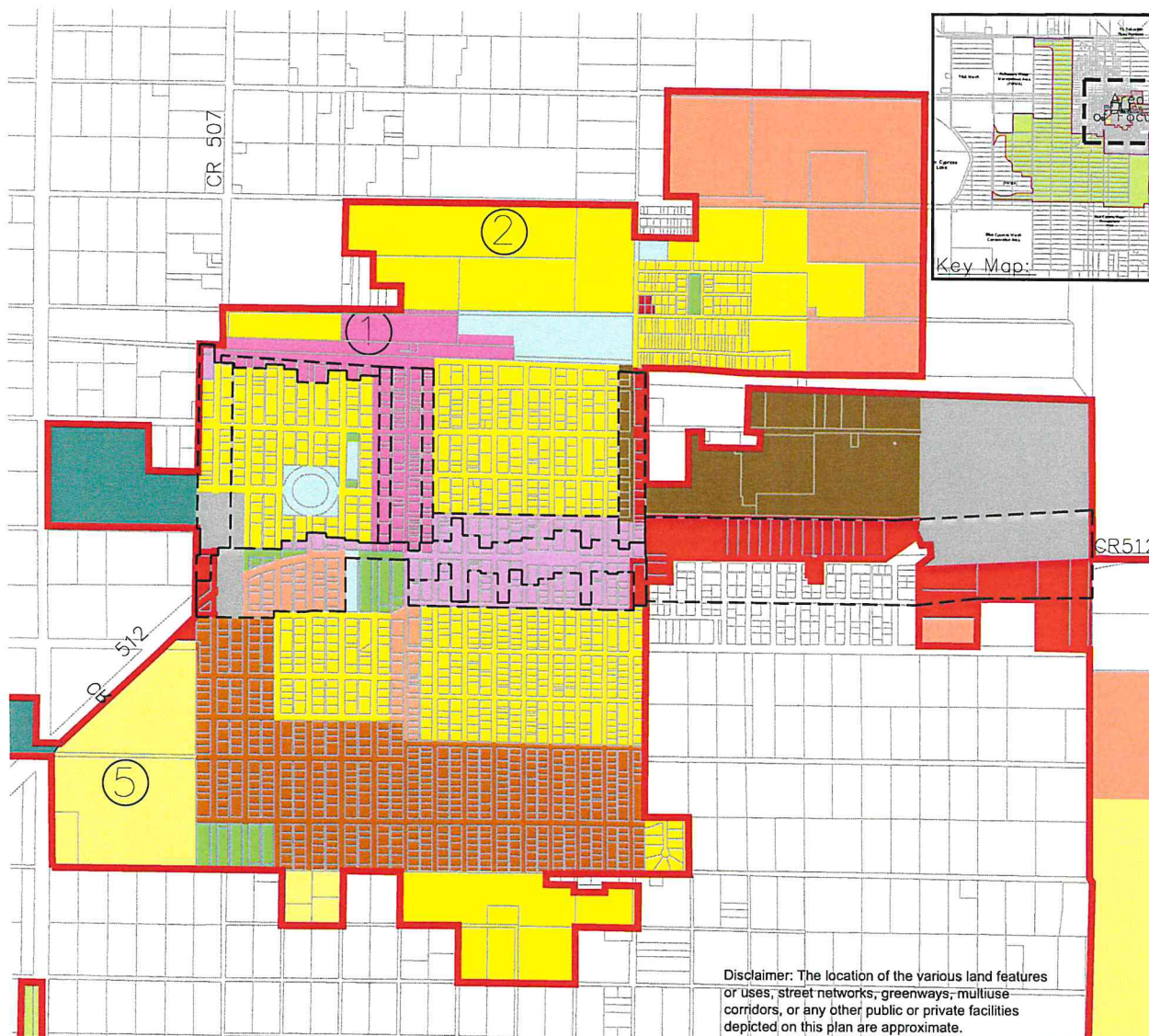
Policy FLUE A-3.2. - Overlay District Boundaries.

The following infill/redevelopment mixed-use districts are hereby created as future land use map overlays.

1. CR 512 Old Town. This district applies as follows:
 - a. All properties fronting CR 512 between Willow Street and 141st Avenue and those properties that contain corner frontage with CR 512 and 141st Avenue and CR 512 and Willow Street.
2. CR 512 Old Town - Off Road. This district applies as follows:
 - a. All properties not fronting CR 512 that lie as follows:
 - i. Between CR 512 and Oregon Avenue and between N. Willow Street and N. Pine Street but excluding those properties with frontage on N. Willow Street;
 - ii. Between CR 512 and Michigan Avenue and between S. Willow Street and S. Pine Street; and
 - iii. Between CR 512 and California Avenue and containing a Medium Density Residential future land use designation.
3. CR 512 Frontage Road. This district applies as follows:
 - a. To all portions of a site and buildings located to a depth of 450 feet from the edge of the CR 512 right-of-way between Willow Street and 120th Street, excluding those properties otherwise contained within the CR 512 Old Town district.
4. N. Broadway. This district applies as follows:
 - a. All properties fronting N. Broadway Street but excluding those properties that contain corner frontage with CR 512 and N. Broadway Street;
5. N. Broadway - Off Road. This district applies as follows:

- a. All properties fronting the east side of N. Orange Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
 - b. All properties fronting the west side of N. Pine Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
6. N. Willow. This district applies as follows:
- a. All properties fronting N. Willow Street south of the former railroad right-of-way as recorded in Special Warranty Deed dated December 9, 2010 in Official Records Book 2463, Page 1625 but excluding those properties that contain corner frontage with CR 512 and N. Willow Street.
7. N. Myrtle. This district applies as follows:
- a. All properties fronting N. Myrtle Street but excluding those properties that contain corner frontage with CR 512 and Myrtle Street or contain corner frontage with S. Carolina Avenue and N. Myrtle Street.
8. S. Carolina. This district applies as follows:
- a. All properties with frontage on the south side of S. Carolina Avenue containing an Old Town future land use designation but excluding those properties that contain corner frontage with S. Carolina Avenue and N. Broadway Street.

The boundary between the CR 512 Old Town district and the CR 512 Old Town - Off Road district shall be determined at time of development application for property fronting CR 512 to allow for parcel aggregation.



Land Use Legend:

- Low Density Residential (LDR)
- Low Density Mixed
- Use Neighborhood (LDMXN)
- Low Density Mobile Home (LDMH)
- Medium Density Residential (MDR)
- High Density Residential (HDR)
- Neighborhood Commercial (NC)
- Old Town (OTD)
- Regional Employment
- Activity Center (REAC)
- General Commercial (GC)
- Industrial (I)
- Public / Institutional (PIN)
- Recreation (REC)
- Conservation (CON)
- Villages of Fellsmere (VOF)
- AG-1 (County)
- L-1 (County)
- Fellsmere City Limits
- Infill/Redevelopment Overlay

Note:
1. Educational uses, public buildings and grounds, and other public facilities are also allowed in all residential designations, LDMXD, and VOF land use categories.

Development Limitations for Site Specific Properties:

Map #	Max Allowable Development	Future Land Use	Comp. Plan Objective
1	Not Applicable	LDMXN	B-15 & B-19
2	3.5 units per acre	LDR	B-16
3	650 units	LDMXN	B-17
4	Residential -19,750	VOF	B-21
5	320 units	LDMXN	B-18
6	Non-Residential: 1,250,000sf - Industrial: up to 80% of total square feet - Commercial: up to 20% of total square feet - Office: up to 5% of total square feet Residential: - 5,600 units	LDMXN	B-10
7	Residential - 1.69 Units per acre Non-Residential - 12,000,000 sf	LDMXN REAC/Industrial	B-22

Disclaimer: The location of the various land features or uses, street networks, greenways, multiuse corridors, or any other public or private facilities depicted on this plan are approximate.



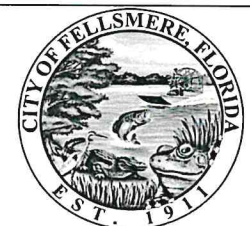
701 E Ocean Blvd., Stuart, Florida 34994
(772) 220-2100 - Fax (772) 223-0220

Adopted: 10/07/10, Ord 2010-07

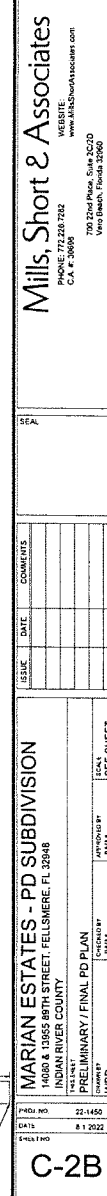
Future Land Use Map

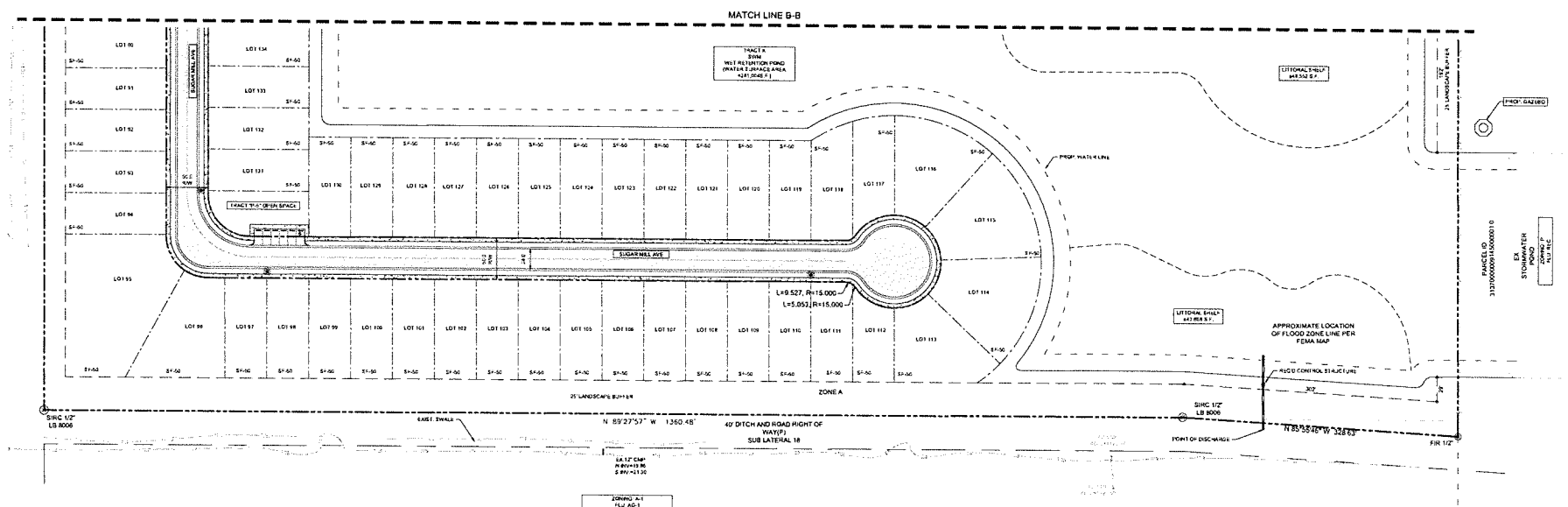
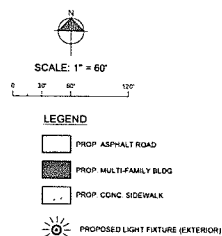
Figure 1-1C

Revised: 01/08/15, Ord 2014-17; _____ Ord 2023-33



22 S. Orange Street
Fellsmere, Florida 32948
(772) 646-6313
www.cityoffellsmere.com





Millis, Short & Associates
PHONE: 712.235.7382
C.A. # 30698
WEBSITE:
www.MissShortAssociates.com
710 22nd Place, Suite 202D
Vero Beach, Florida 32960

MARIAN ESTATES - PD SUBDIVISION
14060 & 13955 89TH STREET, FELLSMERE, FL 32948

MARIAN E.
14080 & 13955 89TH
INDIAN RIVER CO
1-402-2-mg/1.1
FINAL PD PLAN

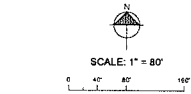
DATE 8.1.2022

C-2C

TIME: 10:34:49 AM

DATE: 9/27/2023

FILE: C:\Users\patrizia.mills\OneDrive\Documents\CAD\2023-1450 Marian Estates\Cont2-1450 Existing Cond.dwg



WATER MANAGEMENT JURISDICTION:
1. FELLESMERE FARMS WATER CONTROL DISTRICT
2. INDIAN RIVER COUNTY (IRWC)
3. ST. JOHNS WATER MANAGEMENT DISTRICT

UTILITIES:
WATER: CITY OF FELLESMERE
SEWER: CITY OF FELLESMERE

GROUND WATER TABLE ELEVATION (ASSUMED):
7.0 TO 7.5 BELOW EXISTING GRADE, NOV 29
CORRECTION FACTOR - (NOV 29 TO NOV 88) (-1.44 NAVD 1988)

ENVIRONMENTAL CONSTRAINT SUMMARY:

SOIL TYPE: (SEE SHEET C-1A & C-1B FOR DETAILS)
SANDY GULF FINE SAND
GULFSTREAM FINE SAND
MALABAR FINE SAND

VEGETATIVE COMMUNITIES UPLANDS - (FLUCCS CLASSIFICATION):
PINE PLANTWOODS
PALMETTO PRAIRIES

WETLAND - (FLUCCS CLASSIFICATION):
EXOTIC WETLAND HARDWOOD

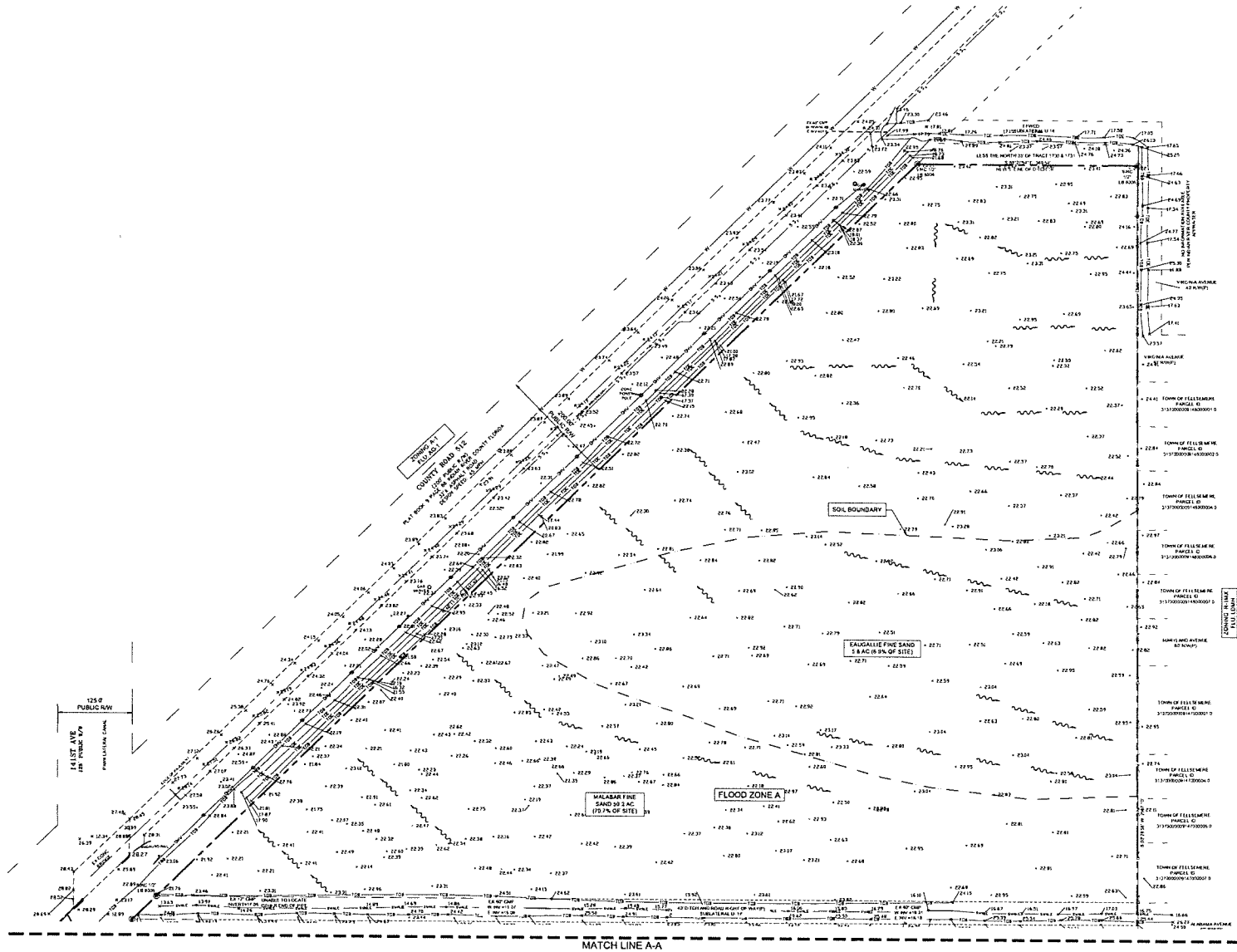
PROTECTED SPECIES:
COCHINE TURTLE

LEGAL DESCRIPTION:

PARCEL "A"
TRACT 1730 LYING SOUTH OF CR 512, LESS THE NORTH 31 FEET; TRACT 1731, LESS THE NORTH 31 FEET; TRACTS 1762, 1763 AND 1764 LYING SOUTH OF CR 512; TRACTS 1829, 1831, 1832, 1842, 1843; THE EAST 1/4 OF TRACT 1864, OR INSURVED TOWNSHIP 32 SOUTH, RANGE 37 EAST, AS SHOWN ON THE PLAT OF FELLESMERE FARMS COMPANY, RECORDED IN PLAT BOOK 3, PAGES 1 AND 2, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; SAID LAND NOW LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA.
PARCEL "B"
THE WEST 1/4 OF TRACT 1864, FELLESMERE FARMS COMPANY SUBDIVISION OF ALL UNSUBDIVIDED PART OF TOWNSHIP 32 SOUTH, RANGE 37 EAST, RECORDED IN PLAT BOOK 3, PAGE 1 IN ST. LUCIE COUNTY, FLORIDA; SAID LANDS NOW LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA.

CONTROLLING BENCHMARK:
NATIONAL GEODETIC SURVEY
IN ART PLOT A7469
PUBLISHED ELEVATION 22.85 NAVD 1988

NOTES:
1. NO EXISTING FLOW WELLS WERE FOUND ON-SITE AT TIME OF SURVEY.



Mills, Short & Associates
REGISTERED PROFESSIONAL ENGINEER
C.A. # 30068
700 2nd Street, Suite 2020
Vero Beach, Florida 32960

SCALE

ISSUE	DATE	COMMENTS
1	9/27/23	RESUBMITTAL NO. 1
2	9/27/23	RESUBMITTAL NO. 2

MARIAN ESTATES - PD SUBDIVISION
1450 & 1455 80TH STREET, FELLESMERE, FL 32948
INDIAN RIVER COUNTY
EXISTING CONDITIONS

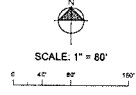
PROJ. NO. 23-1450
DATE: 8/1/2022
DRAWN BY: JAW
CHECKED BY: JAW
SCALE: SEE SHEET

C-1A

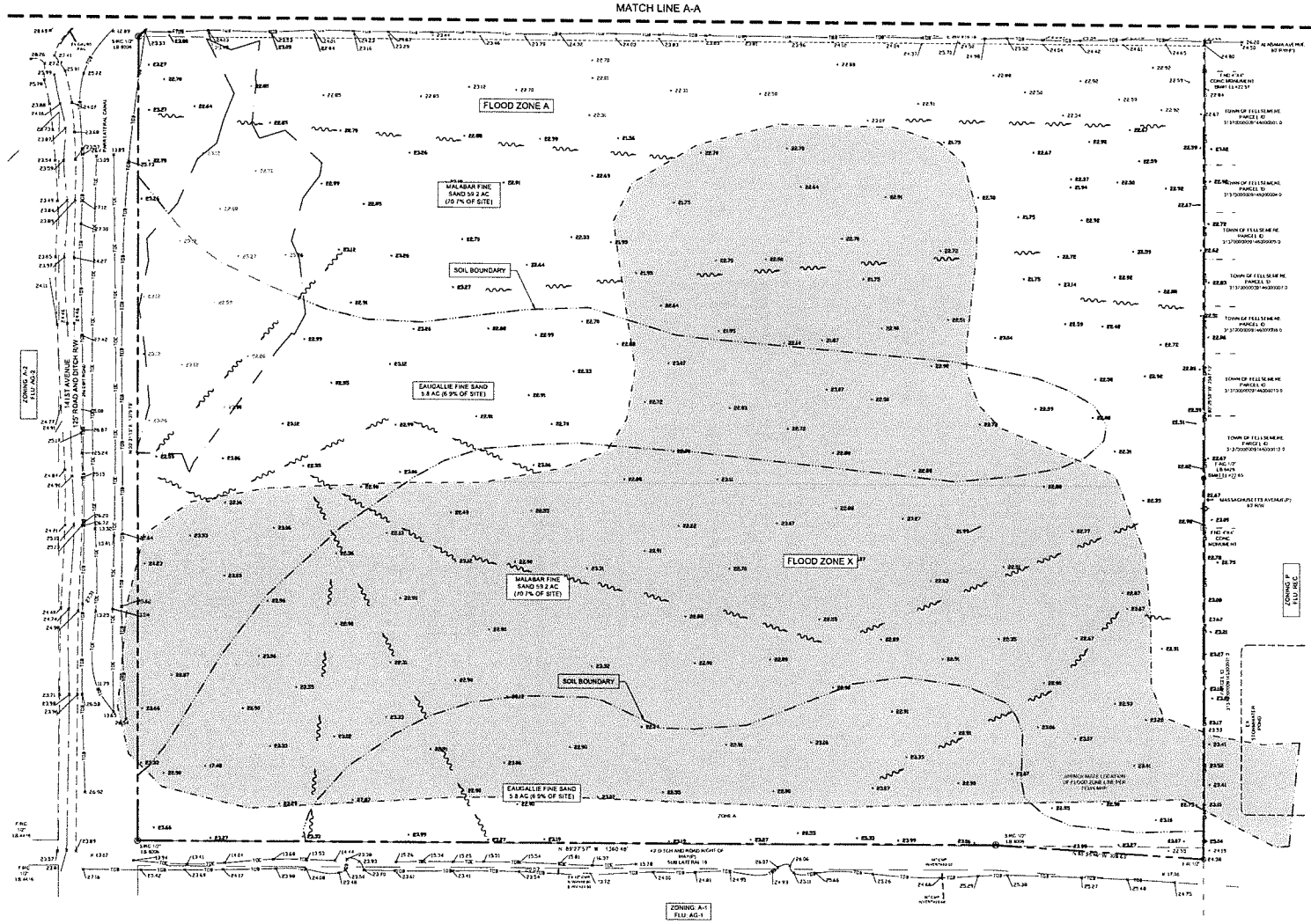
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DATE: 9/27/2023

FILE: C:\Users\jshorpe\Documents\Mills, Short & Associates\Common - Documents\CADD\22-1450 Marian Estates\City\22-1450 Existing Cond.dwg



LEGEND
[Hatched Box] LOCATION OF FLOOD ZONE LINE PER FEMA MAP
[White Box] LOCATION OF WETLAND



Mills, Short & Associates
Professional Engineer
No. 12572
C.A. # 20094
700 22nd Street, Suite 2020
Vero Beach, Florida 32960
www.MillsShortAssociates.com

SEAL

ISSUE	DATE	COMMENTS
1	8/11/23	REGULATORY NO. 2
2	9/27/23	REGULATORY NO. 2

MARIAN ESTATES - PD SUBDIVISION
INDIAN RIVER COUNTY, FELLSMERE, FL 32946

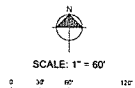
PROJECT NO: 22-1450
DATE: 9/1/2022
SHEET NO: 1

C-1B

TIME: 02:28:49 AM

DATE: 9/27/2023

FILE: C:\Users\pdm\Documents\Common - Documents\CADD\22-1450 Marian Estates\22-1450 Final PD Plan.dwg



PROJECT DATA:

OWNER:
CITY OF FELLESMERE LLC
PO BOX 812170
BOCA RATON, FL 33481

ENGINE/AGENT:
MILLS, SHORT & ASSOCIATES, LLC
700 2ND PLACE, SUITE 2C
VERO BEACH, FLORIDA 32909
772 229 7292

SURVEYOR:
OSS SURVEYING & MAPPING, LLC
700 2ND PLACE SUITE 2A
VERO BEACH, FL 32909
321-914-3978

PARCEL ID (ADDRESS / ZONING):
31-37-0000-0011 7300-0001 B
31-37-0000-0011 1660-0001 D

SITE ADDRESS:
14800 & 13955 9TH STREET
FELLESMERE, FL 33488

ZONING:
PD PRELIMINARY DEVELOPMENT

FUTURE LAND USE:
LD-MN

FLOOD ZONE:
FLOOD NUMBER: 120610091H
DATE: 12/4/2012
ZONE: X

PANEL NUMBER: 1206100705H
DATE: 12/4/2012
ZONE: A

CONTROLLING BENCHMARK NATIONAL GEODETIC SURVEY:
NA87
PD A77663 PUBLISHED ELEVATION 22.85 NAVD 1988

SITE AREA:
SITE AREA: 3,431,321.3 S.F. (78.77 AC)
REQUIRED OPEN SPACE: 1,029,366.36 S.F. (23.63 AC) (30.0%)
PROVIDED OPEN SPACE: 1,081,198.5 S.F. (24.83 AC) (D1 32%)
PROPOSED RETENTION: 506,772.5 S.F. (D1 10 AC) (14.8%)

PROPOSED LOTS:
SINGLE FAMILY
40' x 120' = 48 UNITS
50' x 120' = 178 UNITS
TOTAL: 227 UNITS

TOWN HOMES:
40' x 120' = 105 UNITS

DENSITY:
332 UNITS/78.77 AC = 4.21 DU/AC

PROPOSED PARKING:
STANDARD PARKING: 134 SPACES

CONSTRUCTION PHASES:
TWO (2) PHASES OF CONSTRUCTION
PHASE 1 - RESIDENTIAL
PHASE 2 - COMMERCIAL

PROJECTED CONSTRUCTION SCHEDULE:
COMMENCE: DECEMBER 2023
COMPLETE: DECEMBER 2024

LEGEND

PROPOSED ASPHALT ROAD

PROPOSED MULTI-FAMILY BLDG

PROPOSED CONC SIDEWALK

PROPOSED LIGHT FIXTURE (EXTERIOR)

OFF-SITE IMPROVEMENTS:
F SEWER FORCE MAIN EXT. (CONNECTION ON N CYPRESS ST)
R WATER MAIN (CONNECTION ON MYRTLE ST)
RIGHT TURN LANE INTO 1ST & 2ND ENTRANCE
LEFT TURN LANE INTO 1ST 2ND ENTRANCE

DESCRIPTION	EXISTING (AREA)	PROPOSED (AREA)	COMMENTS
LOT 12 (BLK 1)	1,200.0	1,200.0	
LOT 13 (BLK 1)	1,200.0	1,200.0	
LOT 14 (BLK 1)	1,200.0	1,200.0	
LOT 15 (BLK 1)	1,200.0	1,200.0	
LOT 16 (BLK 1)	1,200.0	1,200.0	
LOT 17 (BLK 1)	1,200.0	1,200.0	
LOT 18 (BLK 1)	1,200.0	1,200.0	
LOT 19 (BLK 1)	1,200.0	1,200.0	
LOT 20 (BLK 1)	1,200.0	1,200.0	
LOT 21 (BLK 1)	1,200.0	1,200.0	
LOT 22 (BLK 1)	1,200.0	1,200.0	
LOT 23 (BLK 1)	1,200.0	1,200.0	
LOT 24 (BLK 1)	1,200.0	1,200.0	
LOT 25 (BLK 1)	1,200.0	1,200.0	
LOT 26 (BLK 1)	1,200.0	1,200.0	
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LOT 35 (BLK 1)	1,200.0	1,200.0	
LOT 36 (BLK 1)	1,200.0	1,200.0	
LOT 37 (BLK 1)	1,200.0	1,200.0	
LOT 38 (BLK 1)	1,200.0	1,200.0	
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LOT 67 (BLK 1)	1,200.0	1,200.0	
LOT 68 (BLK 1)	1,200.0	1,200.0	
LOT 69 (BLK 1)	1,200.0	1,200.0	
LOT 70 (BLK 1)	1,200.0	1,200.0	
LOT 71 (BLK 1)	1,200.0	1,200.0	
LOT 72 (BLK 1)	1,200.0	1,200.0	
LOT 73 (BLK 1)	1,200.0	1,200.0	
LOT 74 (BLK 1)	1,200.0	1,200.0	
LOT 75 (BLK 1)	1,200.0	1,200.0	
LOT 76 (BLK 1)	1,200.0	1,200.0	
LOT 77 (BLK 1)	1,200.0	1,200.0	
LOT 78 (BLK 1)	1,200.0	1,200.0	
LOT 79 (BLK 1)	1,200.0	1,200.0	
LOT 80 (BLK 1)	1,200.0	1,200.0	
LOT 81 (BLK 1)	1,200.0	1,200.0	
LOT 82 (BLK 1)	1,200.0	1,200.0	
LOT 83 (BLK 1)	1,200.0	1,200.0	
LOT 84 (BLK 1)	1,200.0	1,200.0	
LOT 85 (BLK 1)	1,200.0	1,200.0	
LOT 86 (BLK 1)	1,200.0	1,200.0	
LOT 87 (BLK 1)	1,200.0	1,200.0	
LOT 88 (BLK 1)	1,200.0	1,200.0	
LOT 89 (BLK 1)	1,200.0	1,200.0	
LOT 90 (BLK 1)	1,200.0	1,200.0	
LOT 91 (BLK 1)	1,200.0	1,200.0	
LOT 92 (BLK 1)	1,200.0	1,200.0	
LOT 93 (BLK 1)	1,200.0	1,200.0	
LOT 94 (BLK 1)	1,200.0	1,200.0	
LOT 95 (BLK 1)	1,200.0	1,200.0	
LOT 96 (BLK 1)	1,200.0	1,200.0	
LOT 97 (BLK 1)	1,200.0	1,200.0	
LOT 98 (BLK 1)	1,200.0	1,200.0	
LOT 99 (BLK 1)	1,200.0	1,200.0	
LOT 100 (BLK 1)	1,200.0	1,200.0	

DESCRIPTION	EXISTING (AREA)	PROPOSED (AREA)	COMMENTS
LOT 101 (BLK 1)	1,200.0	1,200.0	
LOT 102 (BLK 1)	1,200.0	1,200.0	
LOT 103 (BLK 1)	1,200.0	1,200.0	
LOT 104 (BLK 1)	1,200.0	1,200.0	
LOT 105 (BLK 1)	1,200.0	1,200.0	
LOT 106 (BLK 1)	1,200.0	1,200.0	
LOT 107 (BLK 1)	1,200.0	1,200.0	
LOT 108 (BLK 1)	1,200.0	1,200.0	
LOT 109 (BLK 1)	1,200.0	1,200.0	
LOT 110 (BLK 1)	1,200.0	1,200.0	
LOT 111 (BLK 1)	1,200.0	1,200.0	
LOT 112 (BLK 1)	1,200.0	1,200.0	
LOT 113 (BLK 1)	1,200.0	1,200.0	
LOT 114 (BLK 1)	1,200.0	1,200.0	
LOT 115 (BLK 1)	1,200.0	1,200.0	
LOT 116 (BLK 1)	1,200.0	1,200.0	
LOT 117 (BLK 1)	1,200.0	1,200.0	
LOT 118 (BLK 1)	1,200.0	1,200.0	
LOT 119 (BLK 1)	1,200.0	1,200.0	
LOT 120 (BLK 1)	1,200.0	1,200.0	
LOT 121 (BLK 1)	1,200.0	1,200.0	
LOT 122 (BLK 1)	1,200.0	1,200.0	
LOT 123 (BLK 1)	1,200.0	1,200.0	
LOT 124 (BLK 1)	1,200.0	1,200.0	
LOT 125 (BLK 1)	1,200.0	1,200.0	
LOT 126 (BLK 1)	1,200.0	1,200.0	
LOT 127 (BLK 1)	1,200.0	1,200.0	
LOT 128 (BLK 1)	1,200.0	1,200.0	
LOT 129 (BLK 1)	1,200.0	1,200.0	
LOT 130 (BLK 1)	1,200.0	1,200.0	
LOT 131 (BLK 1)	1,200.0	1,200.0	
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LOT 133 (BLK 1)	1,200.0	1,200.0	
LOT 134 (BLK 1)	1,200.0	1,200.0	
LOT 135 (BLK 1)	1,200.0	1,200.0	
LOT 136 (BLK 1)	1,200.0	1,200.0	
LOT 137 (BLK 1)	1,200.0	1,200.0	
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LOT 158 (BLK 1)	1,200.0	1,200.0	
LOT 159 (BLK 1)	1,200.0	1,200.0	
LOT 160 (BLK 1)	1,200.0	1,200.0	
LOT 161 (BLK 1)	1,200.0	1,200.0	
LOT 162 (BLK 1)	1,200.0	1,200.0	
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LOT 167 (BLK 1)	1,200.0	1,200.0	
LOT 168 (BLK 1)	1,200.0	1,200.0	
LOT 169 (BLK 1)	1,200.0	1,200.0	
LOT 170 (BLK 1)	1,200.0	1,200.0	
LOT 171 (BLK 1)	1,200.0	1,200.0	
LOT 172 (BLK 1)	1,200.0	1,200.0	
LOT 173 (BLK 1)	1,200.0	1,200.0	
LOT 174 (BLK 1)	1,200.0	1,200.0	
LOT 175 (BLK 1)	1,200.0	1,200.0	
LOT 176 (BLK 1)	1,200.0	1,200.0	
LOT 177 (BLK 1)	1,200.0	1,200.0	
LOT 178 (BLK 1)	1,200.0	1,200.0	
LOT 179 (BLK 1)	1,200.0	1,200.0	
LOT 180 (BLK 1)	1,200.0	1,200.0	
LOT 181 (BLK 1)	1,200.0	1,200.0	
LOT 182 (BLK 1)	1,200.0	1,200.0	
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LOT 185 (BLK 1)	1,200.0	1,200.0	
LOT 186 (BLK 1)	1,200.0	1,200.0	
LOT 187 (BLK 1)	1,200.0	1,200.0	
LOT 188 (BLK 1)	1,200.0	1,200.0	
LOT 189 (BLK 1)	1,200.0	1,200.0	
LOT 190 (BLK 1)	1,200.0	1,200.0	
LOT 191 (BLK 1)	1,200.0	1,200.0	
LOT 192 (BLK 1)	1,200.0	1,200.0	
LOT 193 (BLK 1)	1,200.0	1,200.0	
LOT 194 (BLK 1)	1,200.0	1,200.0	
LOT 195 (BLK 1)	1,200.0	1,200.0	
LOT 196 (BLK 1)	1,200.0	1,200.0	
LOT 197 (BLK 1)	1,200.0	1,200.0	
LOT 198 (BLK 1)	1,200.0	1,200.0	
LOT 199 (BLK 1)	1,200.0	1,200.0	
LOT 200 (BLK 1)	1,200.0	1,200.0	

JURISDICTIONAL PERMITS:

CITY OF FELLESMERE PRELIMINARY PD
CITY OF FELLESMERE FINAL PD
CITY OF FELLESMERE SITE CONSTRUCTION PERMIT
CITY OF FELLESMERE UTILITY CONNECTION PERMIT
FELLESMERE FARMS WATER CONTROL DISTRICT DRAINAGE PERMIT
HIC RIGHT-OF-WAY PERMIT
SURVIVOR EIRP PERMIT
DEP WASTEWATER CONNECTION PERMIT
DEP DOMESTIC WATER CONNECTION PERMIT

CITY ATTORNEY NOTE:

ANY SUBMITTAL OF INCOMPLETE INFORMATION MAY
RESULT IN A CHANGE OF RECOMMENDATION OR REQUIREMENTS TO
BE APPLIED

TRAFFIC STATEMENT

ITE TRIP GENERATION MANUAL, 11TH EDITION

AVG RATE: 9.43
SF UNITS: 227
ADT: 9.43 X 227 = 2,140.81 = 2,141 TRIPS

SINGLE FAMILY ATTACHED HOUSING (LAND USE CODE 215)
AVG RATE: 7.20
SF UNITS: 105
ADT: 7.20 X 105 = 756 TRIPS

STRIP RETAIL PLAZA (LAND USE CODE 822)
AVG RATE: 54.45
1,000 S.F. = 187.5
ADT: 10,226.17 = 10,226 TRIPS

COMMERCIAL

BUILDING COVERAGE (MAX 70%)
PROPOSED:
TRACT B BUILDING COVERAGE: 87,537.5 S.F. (50%)
TRACT C BUILDING COVERAGE: 100,241 S.F. (50%)

PROJECT DESCRIPTION:

PROPOSED PROJECT CONSIST OF 227 SINGLE FAMILY UNITS, 105
MULTI-FAMILY UNITS AND 375,617 S.F. OF COMMERCIAL
DEVELOPMENT FRONTING COUNTY ROAD 512. PROPOSED PROJECT
WILL INCORPORATE 24.83 AC OF GREEN SPACE INCLUDING TWO
RETENTION PONDS. ALL OPEN SPACE AND RETENTION PONDS WILL BE
MAINTAINED THROUGH MARIAN ESTATES HOA

LEGAL DESCRIPTION:

PARCEL "A"
TRACT 1730 LYING SOUTH OF CRS12, LESS THE NORTH 35 FEET, TRACT
1731, LESS THE NORTH 35 FEET; TRACTS 1742, 1743 AND 1744 LYING
SOUTH OF CR 512, TRACTS 1829, 1830, 1831, 1862, 1863, THE EAST 1/2 OF
TRACT 1864 OF UNSURVEYED TOWNSHIP 31 SOUTH, RANGE 27 EAST,
AS SHOWN ON THE PLAT OF FELLESMERE FARMS COMPANY, RECORDED
IN PLAT BOOK 2, PAGES 1 AND 2, OF THE PUBLIC RECORDS OF ST. LUCIE
COUNTY, FLORIDA, SAID LAND NOW LYING AND BEING IN INDIAN RIVER
COUNTY, FLORIDA.

PARCEL "B"
THE WEST 1/4 OF TRACT 1864, FELLESMERE FARMS COMPANY
SUBDIVISION OF ALL UNSURVEYED PART OF TOWNSHIP 321 SOUTH
RANGE 27 EAST, RECORDED IN PLAT BOOK 2, PAGE 1 IN ST. LUCIE
COUNTY, FLORIDA; SAID LANDS NOW LYING AND BEING IN INDIAN RIVER
COUNTY, FLORIDA.

PARCEL "C"
THE WEST 1/4 OF TRACT 1864, FELLESMERE FARMS COMPANY
SUBDIVISION OF ALL UNSURVEYED PART OF TOWNSHIP 32

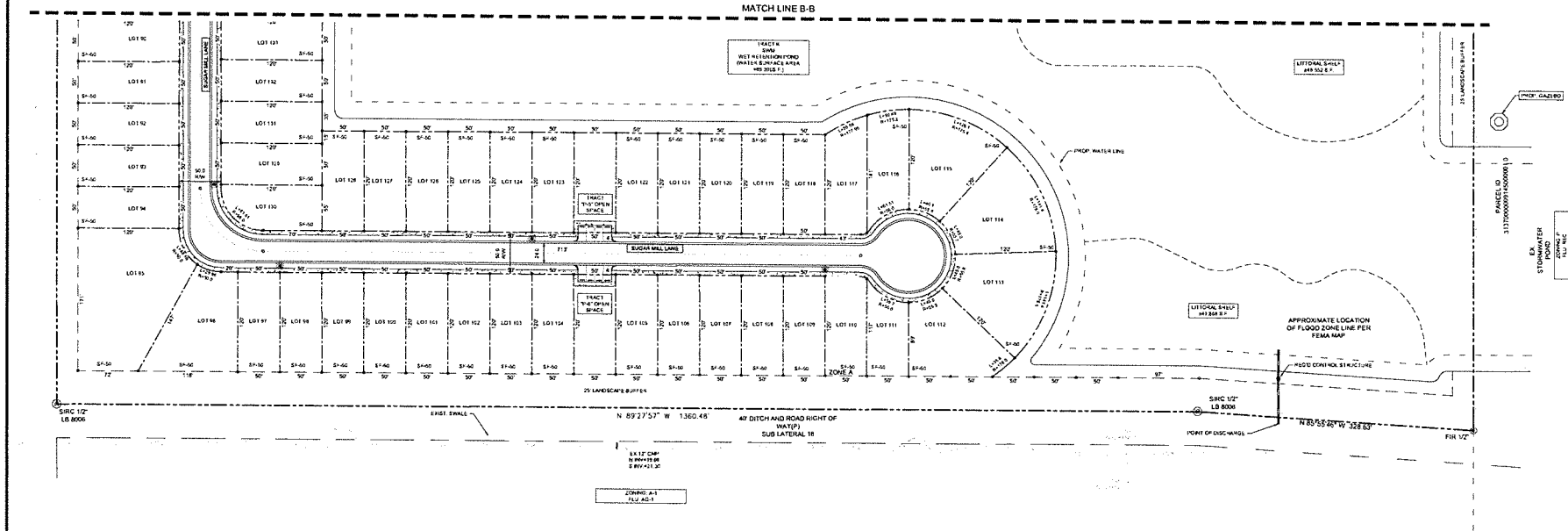


PROJECT NO	22-1450
DATE	8/1/2022
SHEET NO	C-2B

TIME: 10:29:48 AM

DATE: 9/27/2023

FILE: C:\Users\jwpatt\My Documents\CADD\2023\1450 Marian Estates\Civil\22-1450 Final PD Plan.dwg



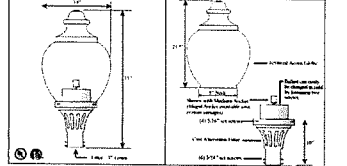
Mills, Short & Associates
Professional Engineer
No. 12512
C.A. # 20098
700 2nd Place, Suite 2020
Vero Beach, Florida 33560
www.MillsShortAssociates.com

ISSUE	DATE	COMMENTS
1	8/1/23	RESUBMITTAL NO. 1
2	8/27/23	RESUBMITTAL NO. 2

MARIAN ESTATES - PD SUBDIVISION
INDIAN RIVER COUNTY, FLORIDA
INDIAN RIVER COUNTY
FINAL PD PLAN
PROJECT NO. 22-1450
DATE: 8/1/2023
SCALE: SEE SHEET

C-2C

SHD1-PC1023CL



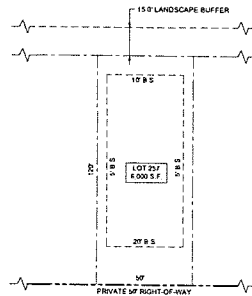
Materials:
The fixture body, which includes the globe and mounting arm, shall be made of cast aluminum. The globe shall be made of tempered safety glass. The mounting arm shall be made of galvanized steel.

Finish:
The fixture shall be finished with a powder coat finish. The mounting arm shall be finished with a galvanized finish.

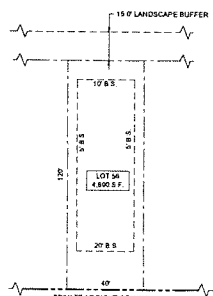
Model #	Manufacturer	Voltage	Socket
SHD1-PC1023CL-01	High Pressure Sodium	120V	Medium
SHD1-PC1023CL-02	High Pressure Sodium	277V	Medium
SHD1-PC1023CL-03	High Pressure Sodium	480V	Medium
SHD1-PC1023CL-04	High Pressure Sodium	277V	Medium
SHD1-PC1023CL-05	High Pressure Sodium	480V	Medium
SHD1-PC1023CL-06	High Pressure Sodium	277V	Medium
SHD1-PC1023CL-07	High Pressure Sodium	480V	Medium
SHD1-PC1023CL-08	High Pressure Sodium	277V	Medium
SHD1-PC1023CL-09	High Pressure Sodium	480V	Medium
SHD1-PC1023CL-10	High Pressure Sodium	277V	Medium

LIGHT FIXTURE SPECIFICATION

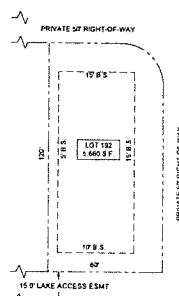
STREET LIGHT NOTES
1. POLE HEIGHT 10'
2. LIGHT FIXTURES AND POLES TO BE BLACK OR DARK BRONZE IN COLOR



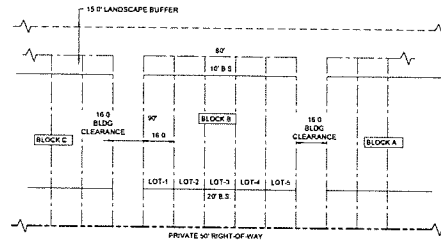
TYPICAL SINGLE FAMILY- INTERIOR LOT
SCALE: 1"=30'



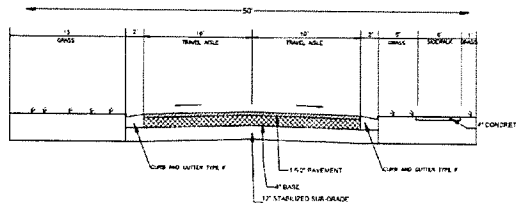
TYPICAL SINGLE FAMILY- INTERIOR LOT
SCALE: 1"=30'



TYPICAL SINGLE FAMILY-CORNER LOT
SCALE: 1"=30'



TYPICAL TOWNHOME LAYOUT
SCALE: 1"=30'



TYPICAL 50' R/W
SCALE: 1"=5'

Mills, Short & Associates

REGISTERED PROFESSIONAL ENGINEER
C.E. # 30068
700 22nd Place, Suite 202D
Vero Beach, Florida 32909

SEAL

ISSUE	DATE	COMMENTS
1	6/1/23	RESUBMITTAL NO. 1
2	9/27/23	RESUBMITTAL NO. 2

MARIAN ESTATES - PD SUBDIVISION

14600 & 13956 69TH STREET, FELLSMERE, FL 32948

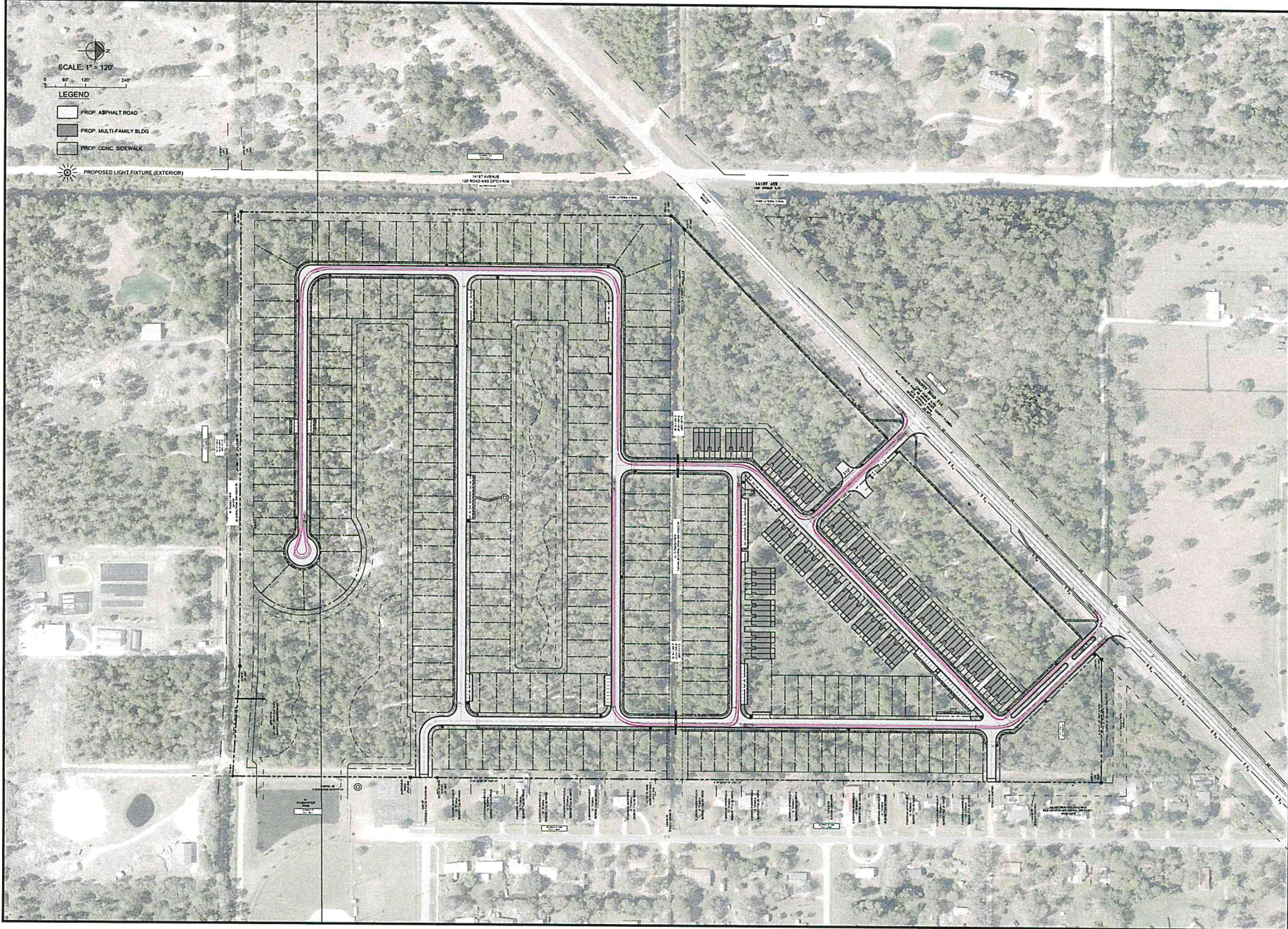
INDIAN RIVER COUNTY

PRELIMINARY / FINAL PD DETAILS

DATE: 8/1/2022

SHEET NO.

C-3



C-4

MARIAN ESTATES - PD SUBDIVISION
MARIAN ESTATES, WITH STREET, YELLSMERE, FL 32566
INDIAN RIVER COUNTY

FIG. 2-1450
AERIAL
2022

ISSUE	DATE	COMMENTS
A	8.1.23	RESUBMITTAL NO. 1
A	9.27.22	RESUBMITTAL NO. 2

SEAL

Mills, Short & Associates
Professional Engineer
C.A. # 20048
700 22nd Place, Suite 2020
Vero Beach, Florida 32909
www.MillsShortAssociates.com

**DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF FELLSMERE, FLORIDA
AND
CGV OF FELLSMERE, LLC**

This Development Agreement is made this ____ day of _____, 2023, between the City of Fellsmere, Florida (the "City") and CGV of Fellsmere, LLC a Florida limited liability company and its successors or assigns in title or interest (the "Owner"), to be effective upon the Effective Date of Ordinance No. 2023-_____.

GENERAL FINDINGS

A: That the application for a Development Agreement for CGV of Fellsmere, LLC was duly and properly filed with the City of Fellsmere (the "City") as required by the City's Land Development Code.

B: That all fees and costs which are by ordinance and resolution required to be borne and paid by the applicant will be billed by the City to the applicant and paid within thirty (30) days from the date of billing receipt.

C: That the applicant is the Owner of 78.77 acres more or less, (the "Land" or "Property"), situated in the City. The Land is being developed as Marian Estates. This Land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof.

D: That the Owner has certified to the City compliance with the "Public Notice" requirements of the City's Land Development Code.

DEVELOPMENT AGREEMENT

Section 1.0 Development Concept. The above General Findings are incorporated herein. The Property shall be developed as a planned development that generally conforms to the Preliminary Development Plan as adopted by Resolution No. 2023-_____. This Development Agreement and the Preliminary Development Plan shall govern the development of the Property as a planned development and shall regulate the future use of the Property during their respective existence.

Section 1.1 Preliminary Development Plan. The Preliminary Development Plan shall consist of the Preliminary Development Plan prepared by _____ dated _____.

Section 1.2 Site Plan and Subdivision Approval. After the Preliminary Development Plan is approved, and prior to issuance of any permits for construction, including clearing and grading, a Final Development Plan and/or Subdivision Plat with Site Construction Plan for a phase of the project shall be prepared and submitted for review and approval to the City in the manner

required by the City's Land Development Code. The overall project may be developed in phases as specified in Section 3.0.

Section 1.3 Performance Guarantees. Performance guarantees for the installation of public improvements will be provided, at the discretion of the City, at the time of subdivision final plat approval or site construction authorization approval in accordance with Section 16.0 of the City's Land Development Code.

Section 1.4 Enforcement. In the event of any violation of the provisions contained in this Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and this Development Agreement may be further enforced by all appropriate sections of the Code of Ordinances and Land Development Code of the City, including, but not limited to, code enforcement action. However, in the event of a violation of paragraph B of the General Findings, regarding payment to the City, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall also have the right to rescind this Development Agreement for nonpayment.

Section 2.0 Unified Ownership. The Applicants or their successors in title shall maintain unified ownership of the Land until approval of a final plat or other legally permissible division of the property dividing or subdividing all or portions of the property. Subsequent owners of the Land or portions of the Land shall be bound by this Development Agreement and the Preliminary Development Plan and may request, subject to City Council approval, amendment of this Development Agreement and Preliminary Development Plan for that portion of the Land under their ownership without requiring consent of other owners within the project to submit the amendment.

Section 3.0 Phases of Development. The Land shall be developed in phases consistent with the Preliminary Development Plan. The proposed phasing is as follows:

- Phase 1: Residential Single-Family Homes
 Stormwater Management Areas
 Two Road Connections to S. Myrtle Street
 Intersection Improvements at CR512 and Myrtle Street
 Sidewalk connection to Senior League Park
 Payment of Recreational Fee

- Phase 2: Residential Multi-Family Homes
 Stormwater Management Areas
 Two Road Connections to CR512
 Sidewalk along CR512
 Sidewalk along S. Myrtle from Massachusetts Avenue to CR512
 Intersection Improvements at CR512 and Broadway

- Phase 3: Non-Residential Uses

Stormwater Management Areas Improvements along Myrtle Street

Subsequent development phases will be determined by market conditions and detailed through the subdivision and/or site plan approval process.

Section 4.0 Land Uses Within the PDD. The location and size of each land use area is shown on the Preliminary Development Plan and the uses allowed in such areas are as follows:

Single-Family

Within the areas designated as Single-Family on the Preliminary Development Plan, the uses shall be limited to the following:

- Single Family Homes with minimum two-car garage;
- Clubs and lodges;
- Cultural or Civic Facility/Building or Use; Community Center Building;
- Home Based Business as set forth in the Land Development Code as may be amended;
- Recreation, outdoor; and
- Stormwater and Utility Infrastructure to support allowed uses.

Multi-Family

- Multi Family Homes with minimum one-car garage;
- Clubs and lodges;
- Cultural or Civic Facility/Building or Use; Community Center Building;
- Recreation, outdoor; and
- Stormwater and Utility Infrastructure to support allowed uses.

Neighborhood Commercial

- All uses listed as permitted or conditional in Article IX CR512 Overlay District Design Standards, of the Land Development Code (upon the effective date of a Comprehensive Plan Amendment designating the Neighborhood Commercial area under the CR512 Old Town Infill/Overlay District of the Comprehensive Plan) and all development activity shall be in accordance with Article IX CR512 Overlay District Design Standards. The intensity of the approved uses shall be in accordance with Section 9.6 CR512 Old Town Overlay District Standards.

All uses fronting on CR512 in the Neighborhood Commercial area as shown on the Preliminary Development Plan must be conducted indoors, except outdoor seating for restaurants related to a principal structure. Outdoor retail sales accessory to a principal use may be permitted by the City. If drive-through bays are part of a proposed use, such bays shall not be oriented toward CR512.

Any amendment to the uses listed as permitted or conditional above shall be considered a major amendment to the project.

Section 5.0 Development Standards.

Section 5.1 Project Density and Number of Units: The Preliminary Development Plan provides for a maximum of 332 residential units within the areas designated as residential comprised of 227 single-family units and 105 multifamily units subject to approval of a Comprehensive Plan Amendment to incorporate the Neighborhood Commercial area into the CR512 Old Town Infill/Overlay District of the Comprehensive Plan. The allocation of units by type may be amended by the Owner based on market conditions and project phasing so long as the total of 332 residential units in the residential area is not exceeded. Any amendment of the allocation of units by type in excess of five percent (5%) shall be considered a major amendment to the project.

Section 5.2 Project Buffers: The project shall provide a twenty-five (25) foot natural buffer or landscaped buffer along all project boundaries except CR512 frontage. Buffers and landscaping along CR 512 shall conform to the Fellsmere CR 512 Old Town Overlay District requirements as included in Article IX of the Fellsmere Land Development Code. Unless otherwise noted, project buffers shall meet Type B minimum standards per Section 11.4.D.2 of the City's Land Development Code. Where buffers contain preserved vegetation equal to Type B minimum standards, additional planting is not required. The twenty-five (25) foot buffer shall be included within the required building setback.

Internal buffering shall be required as set forth by Section 3.21.H.1.j, Land Development Code. As part of the application for the final development plan within Phase 1 and Phase 2, the applicant shall provide a proposed landscape plan demonstrating the level of buffering proposed between single and multifamily and between the multifamily and nonresidential, respectively. The landscape plan must demonstrate at time of final development plan approval that all service areas are totally screened from any residential area. Screening may take the form of additional landscaping, walls, berms, or intervening buildings or combination thereof.

Section 5.3 Single-Family Dwellings

Building and Parcel Requirements

Minimum Parcel Size: 40' x 100'

Front Setback = 20'

Side Setback = 5'

Side Corner Setback = 10'

Rear Setback = 30'

Accessory Structure Setback = 5'

Maximum Project Density: As set forth in the Preliminary Development Plan

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Height: 35 feet

For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.4 Multi-Family Dwellings

Building and Parcel Requirements

Minimum Parcel Size: 16'x50'

Maximum Project Density: As set forth in the Preliminary Development Plan

Front Setback = 20'

Side Setback = 5'

Side Corner Setback = 10'

Rear Setback = 30'

Accessory Structure Setback = 5'

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Length: 300 feet

Maximum Building Height: 35 feet

For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.5 Non-Residential and Mixed Use Buildings:**Building and Parcel Requirements**

Minimum Parcel Size: As required by Section 9.6, Land Development Code

Floor Area Ratio: As set forth in Section 9.6, Land Development Code

Maximum required building setbacks: As required by Section 9.6, Land Development Code

Maximum Lot Coverage: As required by Section 9.6, Land Development Code

Maximum Building Height: As required by Section 9.6, Land Development Code

Maximum Building Length: As required by Section 9.6, Land Development Code

Building Appearance and Design:

All residential buildings within the entire Property shall substantially comply with the building elevations attached hereto as Exhibit "B" with this reference made a part hereof. All nonresidential or mixed use buildings shall comply with the requirements of Article IX (CR 512 Old Town Overlay District Design Standards) of the Fellsmere Land Development Code. Nonresidential building elevations with materials and colors (4-sided) shall be submitted for City Council approval with the final development plan application for the pertinent phase. Compliance with these conditions shall be determined solely by the City Council as part of the approval of the final development plan. The City Council may impose more requirements upon finding that it will improve the general safety, welfare, health, appearance, or aesthetics and is in conformance with the Comprehensive Plan and this Code. The City shall have the right to evaluate the physical layout, architectural characteristics and amenities of the planned development to require changes or modifications in design to create compatibility and conformity in the variety of uses within the project to insure, protect and promote the health, safety and general welfare of the property owners of the planned development, joining property owners and the residents of the City.

Off-Street Parking and Loading Requirements:

All residential off-street parking shall comply with the off-street parking regulations as set forth in Section 7.2 of the Fellsmere Land Development Code with the addition of 0.25 spaces per unit for

guest parking for all lots 50' wide or less in width, including townhome lots. All nonresidential and mixed-use off-street parking shall comply with the off-street parking regulations as set forth in Section 7.2, Fellsmere Land Development Code. Off-street loading shall comply with Section 7.3, Fellsmere Land Development Code.

Section 5.6 Amendment

All amendments to the Preliminary Development Plan, other than those deemed by the Fellsmere City Manager or designee to be minor amendments as set out herein, unless the City Manager elects to defer the decision to the City Council, shall be considered major and require the review and recommendation of the Fellsmere Planning and Zoning Commission and action by the Fellsmere City Council in the same manner as this Development Agreement was adopted. Minor amendments are changes to the Preliminary Development Plan that result from the application of more specific site data or design criteria but do not result in material revisions to the Preliminary Development Plan by affecting the conceptual layout and content. Minor amendments include but are not limited to the following list which are intended to provide examples of minor amendments:

- a. Relocation of internal primary and secondary access points to meet standard engineering design criteria, avoid unsuitable soils or properly align access points and to accommodate future tenant requirements.
- b. Relocation of the internal roads and driveways to comply with standard design criteria, conform to final lot and building layouts and avoid tree or wetland areas.
- c. Reduction of five (5) percent or less to the size or boundaries of the areas allocated to recreational use.
- d. Modification of the boundaries of storm water retention areas, tree protection areas and wetland areas and buffers, which do not fall below minimum standards, based on specific field information or conditions resulting from non-local permits.
- e. Decrease in overall project density.
- f. Change of single-family to multifamily unit mix by less than 5%.

Any requested amendment to the permitted land uses in Section 4.0 or dimensional standards for the development is a major amendment to the project.

Any requested amendment to Development Standards in Sections 5.1 through 5.8 is a major amendment to the project.

Section 5.7 Project Signage

Signs shall comply with the provisions of Sections 9.3 and 9.6, Land Development Code.

Section 5.8 Common Open Space: Open space shall be as set forth by Section 3.21.G, Land Development Code. In lieu of providing all of the 30% open space required by Section 3.21.G.6.a of the

Land Development Code, the Owner/Developer shall pay into the City's Recreation Trust Fund, at a minimum, an amount equivalent to the value of one-third of the acreage of open space not provided onsite to be used by the City toward public recreational improvements. Based on the Preliminary Development Plan, with approximately ____ acres of open space, the project is required to provide payment in lieu of ____ acres of open space, which represents the portion of the 30% required open space not provided on site. The value shall be determined by an MAI Appraiser based on the proposed use/density of the final end product, in other words the value of the land with all infrastructure completed and the Land ready for construction. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development order(s).

Section 5.9 Waivers. The Owner has requested a waiver of certain design features for the Project. The following design provisions contained in the Land Development Code as set forth below are waived to the extent as amended:

<u>Existing provision to be waived</u>	<u>Provision as amended to be complied with</u>
1. Section 3.21 H.1. Front building setback of 50 feet from County right of way	7.5 to 15' foot front building setback from County right of way (CR512)
2. Section 3.21 H.1.g. parking Plan required with Preliminary Development Plan	Provide parking plan for nonresidential uses at Final Development Plan
3. Section 3.21 H.1.i. Buffer Yard Requirement of 30 feet	25 foot Buffer Yard Requirement except along CR512 where no buffer is required
4. Section 17.15.3.f.12 and 13 General landscape plans and conceptual building elevations	Provide complete landscape plans and building elevation at Final Development Plan

Section 6.0 Environmental Considerations. As allowed by Section 13.1, Land Development Code, the Owner shall meet the Conservation Requirements of the City through the payment of a fee in lieu of providing the required 15% habitat set-aside. Based on the Environmental Statement provided in support of the Preliminary Development Plan, with approximately 78.77 acres of native habitat, the project is required to provide payment in lieu for 11.82 acres of required conservation area, which is equivalent to 15% of the existing native habitat.

In lieu of providing 11.82 acres required to meet the fifteen percent (15%) conservation area within the Development, the Owner/Developer shall pay into the City's Conservation/Recreation Trust Fund an amount equivalent to the value of 11.82 acres to be used by the City toward public conservation or recreational improvements. The value of the 11.82 acres shall be determined by an MAI Appraiser based on the proposed use/density of the final end product, in other words the value of the land with all infrastructure completed and the Land ready for construction. The City shall hire the appraiser and be

reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development order(s).

Section 7.0 Utility Services. Public utilities consisting of water and wastewater for the Property shall be obtained from the City of Fellsmere and shall be applied for, built, and conveyed in accordance with the City's rules, regulations, requirements, tariffs, policies, and agreements prevailing at the time of Owner's application for service.

The Owner shall provide permanent standby emergency generators and radio telemetry units with each sewer pump station constructed by the Owner to serve the project.

The Owner shall construct all wastewater and water lines required to serve the project. For all private streets, the Owner will provide the City with utility easements granting the City access to maintain utility lines dedicated to the City. Water meters used within the project shall provide for electronic reading.

The City may require oversize lines for additional anticipated development. If oversize lines are required, the Owner shall be entitled to cost recovery for the additional cost beyond the cost required to service the Owner's project. The cost recovery shall be based upon the actual cost of installation and shall be paid to the City by future development based on its proportionate share of the recoverable cost. Upon receipt of funds from a third-party user, the City shall promptly reimburse the recovered cost to the Owner.

Other utilities not provided by the City shall be built in accordance with and consistent with the City's requirements. Electric, natural gas, telephone, internet fiber, cable televisions and like utilities shall be installed underground. The project shall provide internet fiber and natural gas to each lot.

Section 8.0 Stormwater Drainage. Provision for storm water retention shall be in accordance with the requirements of the City of Fellsmere Land Development Code, Fellsmere Water Control District, and St. John's River Water Management District requirements. The project shall incorporate off-site drainage improvements by joining the on-site lake with the adjacent City owned off-site lake. The City will provide all required easements to accommodate such improvements. In exchange for utilizing the City owned lake for stormwater drainage purposes and thus increasing the number of residential units on the property, the Owner Developer shall pay the City a fee equivalent to the value of the land available for residential development that would have been required for stormwater drainage. The value of the land shall be determined by MAI Appraiser based on the proposed use/density of the final end product, in other words the value of the land with all infrastructure completed and the Land ready for construction. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development order(s). The Owner/Developer shall enter into a License Agreement with the City authorizing with conditions the Owner/Developer to enter upon City land for constructing the connection for stormwater drainage purposes. The subdivision plat shall provide the City with access to the subdivision for maintaining all stormwater drainage improvements dedicated to the City.

Section 9.0 Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the City of Fellsmere Comprehensive Plan and Land

Development Code. In addition to any on-site improvements, the Owner/Developer shall provide the following off-site improvements as conditions:

Section 9.1 CR 512/Project Entrance Intersection Improvements: Prior to the approval of any final plat, the Owner/Developer shall construct left turn and right turn lanes into the Development from County Road 512 at each entrance of the Development. In lieu of installation of the left turn and right turn lanes, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to conduct business in Florida for one hundred twenty-five percent (125%) of the cost of installing the required improvements. The improvements shall be fully installed within no later than one (1) year from recording the Final Subdivision Plat or approval of site construction authorization, whichever shall first occur. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney. All roads internal to the Development shall be constructed and paved to such standards as required by the City.

Section 9.2 CR 512/Myrtle Intersection Improvements: Prior to the approval of any final plat, the Owner/Developer shall construct left turn lanes at CR512 and Myrtle. In lieu of installation of the left turn lanes, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to conduct business in Florida for one hundred twenty-five percent (125%) of the cost of installing the required improvements. The improvements shall be fully installed within no later than one (1) year from recording the Final Subdivision Plat or approval of site construction authorization, whichever shall first occur. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

Section 9.3 North Myrtle Street Improvements: Prior to the issuance of the first nonresidential building permit, the Owner/Developer shall install City and Indian River County approved improvements to North Myrtle Street as set forth in the letter from Indian River County dated July 25, 2012, attached hereto as Exhibit "C" and with this reference made a part hereof. In lieu of installation of the improvements prior to issuance of the first nonresidential building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to conduct business in Florida for one hundred twenty-five percent (125%) of the cost of installing the improvements. The Improvements shall be fully installed no later than one (1) year from recording the Final Subdivision Plat or approval of site construction authorization. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

The City of Fellsmere shall enter into a cost share agreement with the Owner/Developer to provide cost reimbursement from other development that assigns traffic to North Myrtle Street, within a period of ten (10) years from the Owner/Developer's completion of all improvements to North Myrtle Street as set forth in this Section 9.3. Developments that will be subject to such cost share shall be a minimum of 20 residential units or their equivalent traffic generation.

Section 9.4 CR 512/Broadway Intersection Improvements: Prior to the issuance of the 80th residential building permit or as required to meet concurrency, whichever occurs earlier, the Owner/Developer shall install a City and Indian River County approved traffic signal at the

intersection of Broadway and CR512. In lieu of installation of the traffic signal prior to issuance of the 80th residential building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to conduct business in Florida for one hundred twenty-five percent (125%) of the cost of installing the traffic signal. The traffic signal shall be fully installed no later than fourteen (14) months from the issuance of the 80th residential building permit. If the traffic signal is required to meet concurrency, building permits will not be issued until the traffic signal is fully installed. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

Section 9.5 CR 512 Road Improvements: Prior to the issuance of the first multifamily building permit or as required to meet concurrency, whichever occurs earlier, the Owner/Developer shall install City and Indian River County approved improvements along CR512 from Willow Street to Myrtle Street. The Owner will design, install and pay for right-of-way improvements in the form of a 3-lane roadway, drainage and street lighting.

Section 9.6 Bicycle and Pedestrian Facilities: In addition to facilities set forth above, the Owner will provide the following bicycle and pedestrian facilities:

9.6.1: The Owner/Developer shall construct a five (5) foot wide sidewalk along the west side of South Myrtle Street from CR512 to Massachusetts Avenue prior to the issuance of the 160th single family residential building permit.

9.6.2: The Owner/Developer shall construct five (5) foot wide sidewalks along one side of all roads within the Property. For nonresidential development, the sidewalk shall be installed as part of the site infrastructure. For multifamily development, the sidewalk shall be constructed prior to the certificate of occupancy for each structure. For single family development, the sidewalk shall be provided as set forth in Section 10 d. of this Agreement.

9.6.3: The Owner/Developer shall construct an eight (8) foot wide sidewalk along the south side of CR512 from the western end of the development to Cypress Street, to facilitate access to the Elementary School on Cypress Street, prior to the issuance of the twenty-fifth single family residential building permit.

Section 9.7 Internal Roads: All roads leading into and throughout the development shall be paved and designed as minimum 50-foot wide rights-of-way with curb and gutter to meet the City standards as set forth in Section 7.19 of the Fellsmere Land Development Code and shall be aligned and connected to adjoining streets to maintain the City grid system. All roads within the development shall be private and open to the public. The project shall not be gated.

Section 10.0 Other Development Conditions: The Owner shall implement deed restrictions subject to approval of the City Attorney to include:

- a. Each structure shall consist of “on-site” construction; no pre-manufactured structures shall be allowed, unless allowed by the City pursuant to standards set out in the Pattern Book. Metal buildings are specifically prohibited except as accessory uses for residential units.

- b. All single-family homes shall be no less than 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.
- c. All single-family homes shall have as a minimum an attached two car garage.
- d. Each single-family home shall be responsible for and include construction of the adjacent sidewalk and street trees built to City specifications prior to the issuance of a Certificate of Occupancy for such single family home.
- e. Each property owner shall participate in a solid waste pick-up service.
- f. All roads within the development shall be private and maintained by an incorporated property owner's association(s).
- g. The property owner's association described in Section 11.0 shall maintain the streetscape enhancements along the CR 512 frontage of the Property.
- h. In the event of any violation of the provisions contained in the Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and the Development Agreement may be further enforced by all appropriate sections of the Code of Ordinances and Land Development Code of the City, , including, but not limited to, code enforcement action.

Section 11.0 Building or Property Owners Association. The Owner shall create an incorporated property owner's association (POA) or associations for the purpose of maintaining, repairing and replacing improvements conveyed to the property owners association or associations; enforce covenants and restrictions; and assure continued compliance with covenants and restrictions imposed by the various permitting agencies, including but not limited to, the City of Fellsmere, Indian River County, St. Johns River Water Management District, the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and the Florida Department of Environmental Protection. The deed restrictions and documents creating a property owner's/home owner's association for the entire project shall be reviewed and approved by the City Attorney for items required by this Development Agreement, Annexation Agreement and City regulations, and shall be recorded along with the first Site Plan or Final Plat at the Owner's/ expense.

Section 12.0 Development Regulations. The Fellsmere Comprehensive Plan and Land Development Code will control regarding any items not specifically covered by this Development Agreement.

Section 13.0 Local Development Permits Obtained by Owner. All local Development Permits shall be obtained at the sole cost of the Owner and, that in the event that any such local Development Permits are not received, no further development of the Property shall be allowed until such time as the City Council of the City of Fellsmere has reviewed the matter and determined whether or not to terminate this Development Agreement, or to modify it in a manner consistent with the public interest and the City of Fellsmere Comprehensive Plan.

Section 14.0 Compliance with laws not identified in Development Agreement. The failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions, and that any matter or thing required to be done under existing ordinances of the City of Fellsmere shall not be otherwise amended, modified or waived unless such modification, amendment or waiver is expressly provided for in this Development Agreement with specific reference to the code provisions so waived, modified or amended.

Section 15.0 Expiration: This Development Agreement shall be valid for ten (10) years from the date of execution. This Development Agreement may be extended by mutual consent of the City Council and the Owner, subject to two (2) public hearings. The term of any one (1) extension shall not exceed five (5) years. This Development Agreement shall run with the land and shall bind all parties hereto and inure to the benefit and burden of all parties hereto as successors in title or interest. The above notwithstanding, when a phase of the development as set forth in Section 3.0 above is completed and totally built out this Development Agreement and the Pattern Book shall control all future activities within the completed phase.

Section 16.0 Applicability. This Development Agreement shall be subject to all provisions contained in Section 17.22 Development Agreements of the City's Land Development Code.

THIS AREA INTENTIONALLY LEFT BLANK

APPROVED by Resolution No. 202_-____ of the City Council of the City of Fellsmere, Florida, on the _____ day of _____, 202_.

WITNESSES:

CITY OF FELLSMERE, FLORIDA

Print Name: _____
Address: _____

By: _____
Joel Tyson, Mayor

Print Name: _____
Address: _____

ATTEST:

Maria Suarez-Sanchez
City Clerk

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 202_, by Joel Tyson, as Mayor, City of Fellsmere, on behalf of the City of Fellsmere, who is personally known to me or who has produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: _____
Commission No.: _____
My Commission Expires: _____

Owner/Developer, CGV of Fellsmere, LLC,
a Florida limited liability company

WITNESSES to Donald T. Cohen

Print Name: _____
Address: _____

By: _____
Donald T. Cohen, Manager

Print Name: _____
Address: _____

WITNESSES to Joanna Verderame

By: _____
Joanna Verderame, Manager

Print Name: _____

Address: _____

Print Name: _____

Address: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 202_, by Donald T. Cohen, Manager on behalf of CGV of Fellsmere, LLC, who is personally known to me or who has produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: _____
Commission No.: _____
My Commission Expires: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 202_, by Joanna Verderame, Manager on behalf of CGV of Fellsmere, LLC, who is personally known to me or who has produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: _____
Commission No.: _____
My Commission Expires: _____

MORTGAGEE'S JOINDER AND CONSENT

NVR, INC, a Virginia Corporation, whose address is 1409 Tech Boulevard, Tampa, Florida 33619, hereinafter referred to as "Mortgagee" is the owner and holder of a Indemnity Mortgage recorded in Official Record Book 3561, Page 1739, and Official Records Book 3561, Page 1749 both recorded in Public Records of Indian River County, Florida, encumbering the following described land:

SEE EXHIBIT "A" ATTACHED HERTO

The Mortgagee does hereby consent, ratify and join in the execution of the following documents necessary for the development of Marion Estates, a subdivision in Indian River County, Florida, First Amendment to Annexation Agreement, Development Agreement, Preliminary Development Plan, Final Development Plan and Warranty Deed to the City for CR512 right-of-way, collectively referred to as "Development Documents", to which this Joinder and Consent is attached or a copy of which is attached for the purposes herein expressed and agrees that its Indemnity Mortgage(s) shall be subordinated, in all respects, to all Development Documents.

IN WITNESS WHEREOF, the Mortgagee has caused this Joinder and Consent to be signed this day of _____, 202__.

WITNESSES:

MORTGAGEE
NVR, Inc.

Print Name: _____
Address: _____

By: _____
Print Name: _____

Print Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 202__, by _____, as _____ NVR, Inc., a Virginia Corporation, who is ☐ personally known to me or ☐ has produced a _____ as identification.

NOTARY PUBLIC, STATE OF _____

SEAL

**DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF FELLSMERE, FLORIDA
AND
OWNER NAME HERE**

This Development Agreement is made this ____ day of _____, 2023, to be effective upon the Effective Date of Ordinance No. 2023-____ between the City of Fellsmere, Florida (the "City") and OWNER NAME HERE a Florida limited liability company and its successors or assigns in title or interest (the "Owner").

GENERAL FINDINGS

A: That the application for a Development Agreement for OWNER NAME HERE was duly and properly filed with the City of Fellsmere as required by the City's Land Development Code.

B: That all fees and costs which are by ordinance and resolution required to be borne and paid by the applicant will be billed by the City to the applicant and paid within forty-five (45) days from the date of billing receipt.

C: That the applicant is the Owner of 78.77 acres more or less, (the "Land" or "Property"), situated in the City. The Land is being developed as Marian Estates. This Land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".

D: That the Owner has certified to the City compliance with the "Public Notice" requirements of the City's Land Development Code.

DEVELOPMENT AGREEMENT

Section 1.0 Development Concept. The above General Findings are incorporated herein. The Property shall be developed as a planned development that generally conforms to the Preliminary Development Plan as adopted by Resolution No. 2023-____. This Development Agreement and the Preliminary Development Plan shall govern the development of the Property as a planned development and shall regulate the future use of the Property during their respective existence.

Section 1.1 Preliminary Development Plan. The Preliminary Development Plan shall consist of the Preliminary Development Plan prepared by NAME OF ENGINEER HERE dated _____ and a Pattern Book dated _____.

Section 1.2 Site Plan and Subdivision Approval. After the Preliminary Development Plan is approved, and prior to issuance of any permits for construction, including clearing and grading, a Final Development Plan and/or Subdivision Plat with Site Construction Plan for a phase of the project shall be prepared and submitted for review and approval to the City of Fellsmere in the manner required by the City's Land Development Code. The overall project may be developed in phases as specified in Section 3.0.

Section 1.3 Performance Guarantees. Performance guarantees for the installation of public improvements will be provided at the time of subdivision or site plan approval in accordance with the City's Land Development Code.

Section 1.4 Enforcement. In the event of any violation of the provisions contained in this Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and this Development Agreement may be further enforced by all appropriate sections of the Code of Ordinances and Land Development Code of the City, , including, but not limited to, code enforcement action. However, in the event of a violation of paragraph B of the General Findings, regarding payment to the City, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall also have the right to rescind this Development Agreement for nonpayment.

Section 2.0 Unified Ownership. The Applicants or their successors in title shall maintain unified ownership of the Land until approval of a final plat or other legally permissible division of the property dividing or subdividing all or portions of the property. Subsequent owners of the Land or portions of the Land shall be bound by this Development Agreement and the Preliminary Development Plan and may request, subject to City Council approval, amendment of this Development Agreement and Preliminary Development Plan for that portion of the Land under their ownership without requiring consent of other owners within the project to submit the amendment.

Section 3.0 Phases of Development. The Land shall be developed in phases consistent with the Preliminary Development Plan. The proposed phasing is as follows:

- Phase 1: Residential Single-Family Homes
 Stormwater Management Areas
 Two Road Connections to S. Myrtle Street
 Intersection Improvements at CR512 and Myrtle Street
 Sidewalk connection to Senior League Park
 Payment of Recreational Fee

- Phase 2: Residential Multi-Family Homes
 Stormwater Management Areas
 Two Road Connections to CR512
 Sidewalk along CR512
 Sidewalk along S. Myrtle from Massachusetts Avenue to CR512
 Intersection Improvements at CR512 and Broadway

- Phase 3: Non-Residential Uses
 Stormwater Management Areas
 Improvements along Myrtle Street

Subsequent development phases will be determined by market conditions and detailed through the subdivision and/or site plan approval process.

Section 4.0 Land Uses Within the PDD. The location and size of each land use area is shown on the Preliminary Development Plan.

Single-Family

Within the areas designated as Single-Family on the Preliminary Development Plan, the uses shall be limited to the following:

- Single Family Homes with minimum two-car garage;
- ~~Accessory Dwelling Units as set forth by Section _____, Land Development Code as may be amended;~~
- Clubs and lodges;
- Cultural or Civic Facility/Building or Use; Community Center Building;
- Home Based Business as set forth by Section _____, in the City of Fellsmere Land Development Code as may be amended;
- Recreation, outdoor; and
- Stormwater and Utility Infrastructure to support allowed uses.

Multi-Family

- Multi Family Homes with minimum one-car garage;
- Clubs and lodges;
- Cultural or Civic Facility/Building or Use; Community Center Building;
- Recreation, outdoor; and
- Stormwater and Utility Infrastructure to support allowed uses.

Neighborhood Commercial

- All uses listed as permitted or conditional in Exhibit 3, of Section _____, 9.3, Land Development Code (upon the effective date of a Comprehensive Plan Amendment designating the Neighborhood Commercial area under the CR512 Old Town Infill/overlay District of the Comprehensive Plan).

All uses fronting on CR512 in the Neighborhood Commercial area as shown on the Preliminary Development Plan must be conducted indoors, except outdoor seating for restaurants related to a principal structure. Outdoor retail sales accessory to a principal use may be permitted by the City. If drive-through bays are part of a proposed use, such bays shall not be oriented toward CR512.

Any amendment to the uses in subsections a., b. or c. above shall be considered a major amendment to the project.

Section 5.0 Development Standards.

Section 5.1 Project Density and Number of Units: The Preliminary Development Plan provides for a maximum of ~~320-332~~ residential units within the areas designated as residential comprised of 227 single-family units and _____ 105 multifamily units. Furthermore, ~~and those units allowed by Section _____, Land Development Code for the area designated as Neighborhood Commercial, subject to~~

approval of a Comprehensive Plan Amendment to incorporate this ~~the Neighborhood Commercial~~ area into the CR512 Old Town Infill/Overlay District of the Comprehensive Plan, ~~the intensity of nonresidential development shall be as set forth in Section 9.6, Land Development Code.~~ The allocation of units by type may be amended by the Owner based on market conditions and project phasing so long as the total of 320-332 residential units in the residential area is not exceeded. Any amendment of the allocation of units by type in excess of five percent (5%) shall be considered a major amendment to the project.

Section 5.2 Project Buffers: The project shall provide a twenty-five (25) foot natural buffer or landscaped buffer along all project boundaries except CR512 frontage. Buffers and landscaping along CR 512 shall conform to the Fellsmere CR 512 Old Town Overlay District requirements as included in Article IX of the Fellsmere Land Development Code. Unless otherwise noted, project buffers shall meet Type B minimum standards per Section 11.4.D.2 of the City's Land Development Code. Where buffers contain preserved vegetation equal to Type B minimum standards, additional planting is not required. The twenty-five (25) foot buffer shall be included within the required building setback.

Internal buffering shall be required as set forth by Section 3.21.H.1.j, Land Development Code. As part of the application for the final development plan within Phase 1 and Phase 2, the applicant shall provide a proposed landscape plan demonstrating the level of buffering proposed between single and multifamily and between the multifamily and nonresidential, respectively. The landscape plan must demonstrate at time of final development plan approval that all service areas are totally screened from any residential. Screening may take the form of additional landscaping, walls, berms, or intervening buildings or combination thereof.

Section 5.3 Single-Family Dwellings

Building and Parcel Requirements

Minimum Parcel Size: 50'x100'40'x100'

Front Setback = 20'

Side Setback = 5'

Side Corner Setback = 10'

Rear Setback = 30'

Accessory Structure Setback = 5'

Maximum Project Density: As set forth in the Preliminary Development Plan

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Height: 35 feet

For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.4 Multi-Family Dwellings

Building and Parcel Requirements

Minimum Parcel Size: 16'x50'

Maximum Project Density: As set forth in the Preliminary Development Plan

Front Setback = 20'

Side Setback = 5'

Side Corner Setback = 10'

Rear Setback = 30'

Accessory Structure Setback = 5'

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Length: 300 feet

Maximum Building Height: 35 feet

For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.5 Non-Residential and Mixed Use Buildings:

Building and Parcel Requirements

Minimum Parcel Size: As required by Section 9.6, Land Development Code 100' x 150'

Floor Area Ratio: As set forth in Section 9.6, Land Development Code

Maximum required building setbacks: As required by Section 9.6, Land Development Code

Maximum Lot Coverage: As required by Section 9.6, Land Development Code 80 percent

Maximum Building Height: As required by Section 9.6, Land Development Code 35 feet

Maximum Building Length: As required by Section 9.6, Land Development Code 500 feet

Building Appearance and Design:

All residential buildings within the entire Property shall substantially comply with the building elevations attached hereto as Exhibit _____. All nonresidential or mixed use buildings shall comply with the requirements of Article IX (CR 512 Old Town Overlay District Design Standards) of the Fellsmere Land Development Code. Nonresidential building elevations with materials and colors (4-sided) shall be submitted for City Council approval with the final development plan application for the pertinent phase. Compliance with these conditions shall be determined solely by the City Council as part of the approval of the final development plan. The City Council may impose more requirements upon finding that it will improve the general safety, welfare, health, appearance, or aesthetics and is in conformance with the Comprehensive Plan and this Code. The City shall have the right to evaluate the physical layout, architectural characteristics and amenities of the planned development to require changes or modifications in design to create compatibility and conformity in the variety of uses within the project to insure, protect and promote the health, safety and general welfare of the property owners of the planned development and the residents of the City.

Off-Street Parking and Loading Requirements:

All residential off-street parking shall comply with the off-street parking regulations as set forth in Section 7.2 of the Fellsmere Land Development Code with the addition of 0.25 spaces per unit for guest parking for all lots less than 60' wide in width. All nonresidential and mixed-use off-street parking shall comply with the off-street parking regulations as set forth in Section 7.2, Fellsmere

Land Development Code. Off-street loading shall comply with Section _____, 7.3, Fellsmere Land Development Code.

Section 5.8 Amendment

All amendments to the Preliminary Development Plan, other than those deemed by the Fellsmere City Manager or designee to be minor amendments as set out herein, shall be considered major and require the review and recommendation of the Fellsmere Planning and Zoning Commission and action by the Fellsmere City Council in the same manner as this Development Agreement was adopted. Minor amendments are changes to the Preliminary Development Plan that result from the application of more specific site data or design criteria but do not result in material revisions to the Preliminary Development Plan by affecting the conceptual layout and content. Minor amendments include but are not limited to (the following list is intended to provide examples of minor amendments):

- a. Relocation of internal primary and secondary access points to meet standard engineering design criteria, avoid unsuitable soils or properly align access points and to accommodate future tenant requirements.
- b. Relocation of the internal roads and driveways to comply with standard design criteria, conform to final lot and building layouts and avoid tree or wetland areas.
- c. Reduction of five (5) percent or less to the size or boundaries of the areas allocated to recreational use.
- d. Modification of the boundaries of storm water retention areas, tree protection areas and wetland areas and buffers, which do not fall below minimum standards, based on specific field information or conditions resulting from non-local permits.
- e. Decrease in overall project density.
- f. Change of single-family to multifamily unit mix by less than 5%.

Any requested amendment to the permitted land uses in Section 4.0 or dimensional standards for the development is a major amendment to the project.

Any requested amendment to Development Standards in Sections 5.1 through 5.7 is a major amendment to the project.

Section 5.9 Project Signage

Signs shall comply with the provisions of Section _____, s 9.3 and 9.6, Land Development Code.

Section 5.10 Common Open Space: Open space shall be as set forth by Section 3.21.G, Land Development Code. In lieu of providing all of the open space required by Section 3.21.G.6.a of the Land Development Code, and as set forth in Section 7.22, LDC contemplated in the Annexation Agreement, the Owner/Developer shall pay into the City's Recreation Trust Fund an amount equivalent to the value of one-third of the acreage of open space not provide onsite to be used by the City toward

public recreational improvements. Based on the Preliminary Development Plan, with approximately seventy (70) acres of residential subdivision, the Project shall set aside at least seven (7) acres of common open space. ~~_____ acres of open space, the project is required to provide payment in lieu of _____ acres of open space, which represents the portion of the 30% required open space not provided on site.~~ The value shall be determined by an MAI Appraiser based on the proposed use/density of the final end product. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development orders. If this option is utilized by the Owner/Developer, payment shall be made to the City at time of Site Construction Plan approval.

Section 5.11 Waivers. The Owner has requested a waiver of certain design features for the project. The following design provisions contained in the Land Development Code as set forth below are waived to the extent as amended:

<u>Existing provision to be waived</u>	<u>Provision as amended to be complied with</u>
--	---

1. Section 3.21 H 1 Front building setback of 50 feet from County right of way	<u>7.5' to 15'25 foot front building setback from County right of way (CR512)</u>
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_____ 2. Section 3.21 H 1 Maximum Height 35'; except REAC District and at I-95 Interchange	Maximum building height of 45 feet for townhouse units and 50 feet for multi-family units in the LDMXN Land Use designation and 50 feet for non-residential structures in the REAC Land Use designation of the site. REAC Commercial Parcel A and Commercial Lot 1 as illustrated on the Preliminary Development Plan are allowed a maximum building height of 65 feet; however, for Commercial Lot 1 to build to a maximum height of 65 feet a Conditional Use Permit is required.
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_____ 3. Section 3.21 H 1 Building Length 400 feet	Building length not more than 500 feet
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42. Section 3.21 H 1 g parking plan development Required with preliminary development plan	Provide <u>parking plan for nonresidential</u> at final <u>development plan</u>
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35. Section 3.21 H 1 i Buffer Yard requirement of 30 feet	<u>25 foot Buffer Yard Requirement except along CR512 where no buffer is required</u>
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_____ 6. Section 3.21 H 1 j Internal Buffer where commercial abuts residential and industrial abuts commercial	Internal Buffer is not required where commercial uses in REAC area abut multifamily residential use on Parcel B and/or C or where industrial uses in REAC area abut commercial uses on Parcel B and/or C as located on the approved Preliminary Development Plan
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- | | |
|--|--|
| 47. Section 17.15 3.f 12 and 13
General landscape plans and
conceptual building elevations | Provide complete landscape plans and
building elevation at final development plan |
|--|--|

Section 6.0 Environmental Considerations. As allowed by Section 13.1, Land Development Code, and as contemplated in the Annexation Agreement, the Owner shall meet the Conservation Requirements of the City of Fellsmere through the payment in lieu of providing the required 15% habitat set-aside. Based on the Environmental Statement provided in support of the Preliminary Development Plan, with approximately 78.77 acres of native habitat, the project is required to provide payment in lieu for 11.82 acres of -required conservation area, which is equivalent to 15% of the existing native habitat.

In lieu of providing 11.82 acres required to meet the fifteen percent (15%) conservation area within the Development, the Owner/Developer shall pay into the City's Conservation/Recreation Trust Fund an amount equivalent to the value of 11.82 acres to be used by the City toward public conservation or recreational improvements. The value of the 11.82 acres shall be determined by an MAI Appraiser based on the proposed use/density of the final end product. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development orders.

Section 7.0 Utility Services. Public utilities consisting of water and wastewater for the Property shall be obtained from the City of Fellsmere and shall be applied for, built, and conveyed in accordance with the City's rules, regulations, requirements, tariffs, policies, and agreements prevailing at the time of Owner's application for service.

The Owner shall provide permanent standby emergency generators and radio telemetry units with each sewer pump station constructed by the Owner to serve the project.

The Owner shall construct all wastewater and water lines required to serve the project. For all private streets, the Owner will provide the City with utility easements granting the City access to maintain utility lines dedicated to the City. Water meters used within the project shall provide for electronic reading.

The City may require oversize lines for additional anticipated development. If oversize lines are required, the Owner shall be entitled to cost recovery for the additional cost beyond the cost required to service the Owner's project. The cost recovery shall be based upon the actual cost of installation and shall be paid to the City by future development based on its proportionate share of the recoverable cost. Upon receipt of funds from a third-party user, the City shall promptly reimburse the recovered cost to the Owner.

Other utilities not provided by the City shall be built in accordance with and consistent with the City's requirements. Electric, natural gas, telephone, internet fiber, cable televisions and like utilities shall be installed underground. The project shall provide internet fiber and natural gas to each lot.

Section 8.0 Stormwater Drainage. Provision for storm water retention shall be in accordance with the requirements of the City of Fellsmere Land Development Code, Fellsmere Water Control District, and St. John's River Water Management District requirements. The project shall incorporate off-site drainage improvements by joining the on-site lake with the adjacent off-site city-owned lake. The City will provide all required easements to accommodate such improvements.

Section 9.0 Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the City of Fellsmere Comprehensive Plan and Land Development Code. In addition to any on-site improvements, the Owner shall provide the following off-site improvements as conditions:

Section 9.1 CR 512/Project Entrance Intersection Improvements: Prior to the approval of any final plat, the Owner/Developer shall construct left turn and right turn lanes into the Development from County Road 512 at each entrance of the Development. In lieu of installation of the left turn and right turn lanes, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the required improvements. The improvements shall be installed no later than fourteen (14) months from the issuance of the first building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney. All roads internal to the Development shall be constructed and paved to such standards as required by the City.

Section 9.2 CR 512/Myrtle Intersection Improvements: Prior to the approval of any final plat, the Owner/Developer shall construct left turn lanes at CR512 and Myrtle. In lieu of installation of the left turn lanes, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the required improvements. The improvements shall be installed no later than fourteen (14) months from the issuance of the first building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

Section 9.3 North Myrtle Street Improvements: Prior to the issuance of the first nonresidential building permit, the Owner/Developer shall install City and Indian River County approved improvements to North Myrtle Street as set forth in the letter from Indian River County dated July 25, 2012. In lieu of installation of the improvements prior to issuance of the first nonresidential building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the improvements. The Improvements shall be installed no later than fourteen (14) months from the issuance of the first nonresidential building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

The City of Fellsmere shall enter into a cost share agreement with the Owner/Developer to provide cost reimbursement from other development that assigns traffic to North Myrtle Street. Developments that will be subject to such cost share shall be a minimum of 20 residential units or their equivalent traffic generation.

Section 9.4 CR 512/Broadway Intersection Improvements: Prior to the issuance of the first ~~nonresidential~~ 80th residential building permit or as required to meet concurrency, whichever occurs earlier, the Owner/Developer shall install a City and Indian River County approved traffic signal at the intersection of Broadway and CR512. In lieu of installation of the traffic signal prior to issuance of the first building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the traffic signal. The traffic signal shall be installed no later than fourteen (14) months from the issuance of the first nonresidential building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

Section 9.5 CR 512 Road Improvements: Prior to the issuance of the first multifamily building permit or as required to meet concurrency, whichever occurs earlier, the Owner/Developer shall install City and Indian River County approved improvements along CR512 from Willow Street to Myrtle Street. The Owner will design, install and pay for right-of-way improvements in the form of a 3-lane roadway, drainage, enhanced landscaping, and street lighting, ~~an eight (8) foot wide concrete sidewalk along the southern edge of CR 512.~~

Section 9.6 Bicycle and Pedestrian Facilities: In addition to facilities set forth above, the Owner will provide the following bicycle and pedestrian facilities:

9.3.1: The Owner shall construct an five (5) foot wide sidewalk along the west side of South Myrtle Street from CR512 to Massachusetts Avenue no later than fourteen (14) months from the issuance of the final residential building permit, ~~prior to the issuance of the first multifamily building permit.~~

9.3.2: The Owner shall construct five (5) foot wide sidewalks along one side of all roads within the Property. For nonresidential development, the sidewalk shall be installed as part of the site infrastructure. For multifamily development, the sidewalk shall be constructed prior to the certificate of occupancy for each structure. For single family development, the sidewalk shall be provided as set forth in Section 10 of this Agreement.

Section 9.7 Internal Roads: All roads leading into and throughout the development shall be paved and designed as minimum 50-foot wide rights-of-way with curb and gutter to meet the City standards as set forth in Section 7.19 of the Fellsmere Land Development Code. All roads within the development shall be private and open to the public. The project shall not be gated.

Section 10.0 Other Development Conditions: The Owner shall implement deed restrictions subject to approval of the City Attorney to include:

- a. Each structure shall consist of "on-site" construction; no pre-manufactured structures shall be allowed, unless allowed by the City pursuant to standards set out in the Pattern Book. Metal buildings are specifically prohibited except as accessory uses for residential units.
- a. All single-family homes shall be no less that 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.

- b. All single-family homes shall have as a minimum an attached two car garage.
- c. Each single-family home shall be responsible for and include construction of the adjacent sidewalk and street trees built to City specifications prior to the issuance of a Certificate of Occupancy for such single family home.
- d. Each property owner shall participate in a solid waste pick-up service.
- e. All roads within the development shall be private and maintained by an incorporated property owner's association(s).
- f. The property owner's association described in Section 11.0 shall maintain the streetscape enhancements along the CR 512 frontage of the Property.
- g. In the event of any violation of the provisions contained in the Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and the Development Agreement may be further enforced by all appropriate sections of the Code of Ordinances and Land Development Code of the City, , including, but not limited to, code enforcement action.

Section 11.0 Building or Property Owners Association. The Owner shall create an incorporated property owner's association (POA) or associations for the purpose of maintaining, repairing and replacing improvements conveyed to the property owners association or associations; enforce covenants and restrictions; and assure continued compliance with covenants and restrictions imposed by the various permitting agencies, including but not limited to, the City of Fellsmere, Indian River County, St. Johns River Water Management District, the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and the Florida Department of Environmental Protection. The deed restrictions and documents creating a property owner's/home owner's association for the entire project shall be reviewed and approved by the City Attorney for items required by this Development Agreement, Annexation Agreement and City regulations, and shall be recorded along with the first Site Plan or Final Plat at the Owner's/ expense.

Section 12.0 Development Regulations. The Fellsmere Comprehensive Plan and Land Development Code will control regarding any items not specifically covered by this Development Agreement.

Section 13.0 Local Development Permits Obtained by Owner. All local Development Permits shall be obtained at the sole cost of the Owner and, that in the event that any such local Development Permits are not received, no further development of the Property shall be allowed until such time as the City Council of the City of Fellsmere has reviewed the matter and determined whether or not to terminate this Development Agreement, or to modify it in a manner consistent with the public interest and the City of Fellsmere Comprehensive Plan.

Section 14.0 Compliance with laws not identified in Development Agreement. The failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve

the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions, and that any matter or thing required to be done under existing ordinances of the City of Fellsmere shall not be otherwise amended, modified or waived unless such modification, amendment or waiver is expressly provided for in this Development Agreement with specific reference to the code provisions so waived, modified or amended.

Section 15.0 Expiration: This Development Agreement shall be valid for ten (10) years from the date of execution. This Development Agreement may be extended by mutual consent of the City Council and the Owner, subject to two (2) public hearings. The term of any one (1) extension shall not exceed five (5) years. This Development Agreement shall run with the land and shall bind all parties hereto and inure to the benefit and burden of all parties hereto as successors in title or interest. The above notwithstanding, when a phase of the development as set forth in Section 3.0 above is completed and totally built out this Development Agreement and the Pattern Book shall control all future activities within the completed phase.

Section 16.0 Applicability. This Development Agreement shall be subject to all provisions contained in Section 17.22 Development Agreements of the City's Land Development Code.

APPROVED by Resolution No. 2022-_____ of the City Council of the City of Fellsmere, Florida, on the _____ day of _____, 2022.

WITNESSES:

CITY OF FELLSMERE, FLORIDA

Print Name: _____

By: _____
Joel Tyson, Mayor

Print Name: _____

ATTEST:

Maria Suarez-Sanchez
City Clerk

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Jol Tyson and Maria Suarez-Sanchez, as Mayor, City of Fellsmere, and City Clerk, respectively, on behalf of the City of Fellsmere, who are personally known to me or who have produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name: _____

Commission No.: _____

My Commission Expires: _____

NAME OF OWNER HERE, a Florida limited
liability company

WITNESSES:

Print Name: _____

By: _____
, Managing Member

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, Managing Member on behalf of NAME OF OWNER HERE, who is personally known to me or who has produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name: _____

Commission No.: _____

My Commission Expires: _____

MORTGAGEE'S CONSENT

THE UNDERSIGNED, being the holder of a Mortgage and Security Agreement recorded on _____ in Official Record Book ____, Page ____, Public Records of Indian River County, Florida, upon the following described real property to wit:

See Exhibit "A" attached hereto

(herein referred to as "the Real Property")

does hereby join in and consent to the Real Property being subject to this Development Agreement for Marian Estates and agrees that its Mortgage and Security Agreement shall be subordinated to this Development Agreement.

IN WITNESS WHEREOF, the undersigned has caused this consent to be signed by _____ and its seal to be affixed by and with the authority of its Board of Directors this ____ day of _____, 2022.

WITNESSES:

MORTGAGEE

NAME OF MORTGAGEE HERE, a Florida limited liability company

Print Name: _____

By: _____
Print Name: _____
Its: Managing Member

Print Name: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, Managing Member on behalf of NAME OF MORTGAGEE HERE, who is personally known to me or who has produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: _____

Commission No.: _____
My Commission Expires: _____

7. The owner/developer shall demonstrate prior to site plan approval that all concurrency provisions have been addressed or met including but not limited to: sanitary sewer, solid waste, drainage, potable water, parks and recreation, and transportation facilities, including mass transit, where applicable.
8. The development shall work with Indian River County and the City to provide a location for a transit stop; shall include internal pedestrian and bicycle paths; and provide connectivity between the residential and commercial portions of the development.
9. To the extent approved by the State, the development shall be accessible to the St. Sebastian River Preserve State Park.
10. The City and the owner/developer will work closely with the County's Economic Development personnel to recruit commercial or other development desired by Indian River County.
11. Architectural and site design standards shall provide for a uniform theme or character of the development, with a mix of styles and range of prices to assure access by various income groups.
12. Deed restrictions shall include disclosure of the St. Sebastian River Preserve State Park's conduct of proscribed burns and the existence of the gun range to the East.

OBJECTIVE FLUE B-5. GARAFOLO

ORDINANCE 07-25

(AMENDMENT 07-01, ADOPTED ON OCTOBER 11, 2007)

The amendment to the Comprehensive Plan Future Land Use Maps as requested by CGV of Fellsmere, LLC is subject to compliance with the following conditions and requirements, which shall run with the land.

1. The density of the residential development on the above-described land shall not exceed 4.58 dwelling units per acre in order to achieve a maximum of Three Hundred Twenty (320) residential units (152 town homes and 168 single-family homes) on Seventy (70) acres. The commercial activity shall be limited to the Northern Eight and Seventy-Seven One Hundredths (8.77) acres and no portion of this land shall be entitled to be used for calculating residential density.
2. The owner/developer shall demonstrate prior to site plan approval that all concurrency provisions have been addressed or met including but not limited to: sanitary sewer, solid waste, drainage, potable water, parks and recreation, and transportation facilities, including mass transit, where applicable.
3. The owner/developer shall enter into a development agreement to provide for payment of fees for a direct construction of public facilities and services demanded by the development.
4. Existing roadways shall be used as the basis for forming a "grid" pattern for new developments to the extent practical based upon the geography and typography.

5. Architectural and site designs standards shall provide for a uniform theme or character of the development, with a mix of styles and range of prices to assure access by various income groups.
6. The development will incorporate Green Building (LEED) buildings and the site standards to the extent feasible.

OBJECTIVE FLUE B-6. ADMINISTRATIVE AMENDMENT CPA 01-2007-A
FUTURE LAND USE MAP (COMMUNITY REDEVELOPMENT AREA)
ORDINANCE 07-08
(AMENDMENT 07-01, ADOPTED ON OCTOBER 11, 2007)

Expansion of the Old Town land use district. In addition to existing policy language within the Comprehensive Plan, the following policies or conditions shall apply to all developments undertaken within the Old Town District:

1. No development shall exceed the de minimus transportation impacts for urban infill and redevelopment areas as defined in Chapter 163.3180.
2. Architectural and site design standards shall provide for a uniform theme or character of development, with a mix of styles and range of prices to assure access by various income groups.
3. Developers shall enter into a Development Agreement for payment of fees toward required roadway or other public facility improvement required by the City, County or other governmental agencies prior to or as part of site plan approval.
4. Developments shall contribute a fee to be established within the City's fee structure in conjunction with the transit organizations, which fee will be put into a multi-modal transportation project fund that will be used to provide or make enhancements to transit stops, pedestrian and bicycle paths, and provide connectivity between the residential neighborhoods and commercial developments within Old Town.
5. The developers are responsible to pay for all costs associated with any new or expanded public facilities and services required to make their project meet concurrency regulations or to provide their proportionate or fair share contributions therefore.
6. Existing roadways shall be used as the basis for forming a "grid" pattern for new developments to the extent practical based upon the geography and topography.
7. Required CR 512, Broadway, and other road improvements shall be in place prior to certificate of occupancy; or the payments for the proportionate or fair share shall be paid prior to any certificate of occupancy.

OBJECTIVES FLUE B-7—B-20. RESERVED

OBJECTIVE FLUE B-21. VILLAGES OF FELLSMERE (VOF)

The VOF is hereby created as a future land use category on the future land use map of the Comprehensive Plan. The Owners, Fellsmere Estates, LLC, Bernard A. Egan Groves, Inc., and

Chapter 1. Future Land Use Element

GOAL FLUE A. LAND USE

OBJECTIVE FLUE A-3. INFILL DEVELOPMENT AND REDEVELOPMENT

Policy FLUE A-3.1. Overlay District Infill Development and Redevelopment Values.

2. Promote economic development, eliminate blighting community influences, provide a diverse range and mix of development opportunities, protect existing residential areas, and preserve intrinsic natural and man-made resources;
3. Create and incorporate design guidelines for renovations, remodeling, redevelopment and new construction, which includes, but is not limited to, architectural styles, landscaping, signage, walls/fences, and the like;
4. Maintain strong community standards and aesthetics while encouraging diversity in design, materials, layout and other characteristics of development;
5. Establish a set of performance standards for all development to follow;
6. Establish a theme for streetscape, signage, lighting, furniture, and other outside features for use within the district when undertaking development;
7. Create and re-affirm, a sense of place and community for the City of Fellsmere;
8. Encourage the redevelopment and adaptive reuse of historically significant and architecturally important structures.
9. Reinforce and Enhance the City's Community Appearance through application of design review standards and management of signs, landscaping, open space, tree protection, and other urban design amenities.
10. Preserve and/or improve the character of major natural and man-made corridors, including major drainage corridors; pedestrian facilities linking residential areas to parks, schools, and the Downtown; and entrance points to the City and to the Downtown.
11. Complement adjacent development and buildings in terms of general intensity and use for residential projects; and, for commercial projects special consideration shall be given to street pattern, identifiable style, proportions, shapes, relationship to the street, pattern of buildings and yards, and patterns created by doors, windows, projections and recesses. Compatibility with these existing elements does not mean uniformity.

Policy FLUE A-3.2. Overlay District Boundaries.

The following infill/redevelopment mixed-use districts are hereby created as future land use map overlays.

1. CR 512 Old Town. This district applies as follows:

- ✓ a. All properties fronting CR 512 between Willow Street and Myrtle Street and those properties that contain corner frontage with CR 512 and Myrtle and CR 512 and Willow.

2. CR 512 Old Town - Off Road. This district applies as follows:

- a. All properties not fronting CR 512 that lie as follows:
 - i. Between CR 512 and Oregon Avenue and between N. Willow Street and N. Pine Street but excluding those properties with frontage on N. Willow Street;

- ii. Between CR 512 and Michigan Avenue and between S. Willow Street and S. Pine Street; and
 - iii. Between CR 512 and California Avenue and containing a Medium Density Residential future land use designation.
3. CR 512 Frontage Road. This district applies as follows:
- a. To all portions of a site and buildings located to a depth of 450 feet from the edge of the CR 512 right-of-way between Willow Street and 120th Street, excluding those properties otherwise contained within the CR 512 Old Town district.
4. N. Broadway. This district applies as follows:
- a. All properties fronting N. Broadway Street but excluding those properties that contain corner frontage with CR 512 and N. Broadway Street;
5. N. Broadway - Off Road. This district applies as follows:
- a. All properties fronting the east side of N. Orange Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
 - b. All properties fronting the west side of N. Pine Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
6. N. Willow. This district applies as follows:
- a. All properties fronting N. Willow Street south of the former railroad right-of-way as recorded in Special Warranty Deed dated December 9, 2010 in Official Records Book 2463, Page 1625 but excluding those properties that contain corner frontage with CR 512 and N. Willow Street.
7. N. Myrtle. This district applies as follows:
- a. All properties fronting N. Myrtle Street but excluding those properties that contain corner frontage with CR 512 and Myrtle Street or contain corner frontage with S. Carolina Avenue and N. Myrtle Street.
8. S. Carolina. This district applies as follows:
- a. All properties with frontage on the south side of S. Carolina Avenue containing an Old Town future land use designation but excluding those properties that contain corner frontage with S. Carolina Avenue and N. Broadway Street.

The boundary between the CR 512 Old Town district and the CR 512 Old Town - Off Road district shall be determined at time of development application for property fronting CR 512 to allow for parcel aggregation.

**COMPOSITE
EXHIBIT "A"
TO
ORDINANCE 2023-33**

DRAFT

Comprehensive Plan Amendment

POLICY FLUE A-3.2 – OVERLAY DISTRICT BOUNDARIES

Policy FLUE A-3.2. - Overlay District Boundaries.

The following infill/redevelopment mixed-use districts are hereby created as future land use map overlays.

1. CR 512 Old Town. This district applies as follows:
 - ✓ a. All properties fronting CR 512 between Willow Street and 141st Avenue and those properties that contain corner frontage with CR 512 and 141st Avenue and CR 512 and Willow Street.
2. CR 512 Old Town - Off Road. This district applies as follows:
 - a. All properties not fronting CR 512 that lie as follows:
 - i. Between CR 512 and Oregon Avenue and between N. Willow Street and N. Pine Street but excluding those properties with frontage on N. Willow Street;
 - ii. Between CR 512 and Michigan Avenue and between S. Willow Street and S. Pine Street; and
 - iii. Between CR 512 and California Avenue and containing a Medium Density Residential future land use designation.
3. CR 512 Frontage Road. This district applies as follows:
 - a. To all portions of a site and buildings located to a depth of 450 feet from the edge of the CR 512 right-of-way between Willow Street and 120th Street, excluding those properties otherwise contained within the CR 512 Old Town district.
4. N. Broadway. This district applies as follows:
 - a. All properties fronting N. Broadway Street but excluding those properties that contain corner frontage with CR 512 and N. Broadway Street;
5. N. Broadway - Off Road. This district applies as follows:

- a. All properties fronting the east side of N. Orange Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
 - b. All properties fronting the west side of N. Pine Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
6. N. Willow. This district applies as follows:
- a. All properties fronting N. Willow Street south of the former railroad right-of-way as recorded in Special Warranty Deed dated December 9, 2010 in Official Records Book 2463, Page 1625 but excluding those properties that contain corner frontage with CR 512 and N. Willow Street.
7. N. Myrtle. This district applies as follows:
- a. All properties fronting N. Myrtle Street but excluding those properties that contain corner frontage with CR 512 and Myrtle Street or contain corner frontage with S. Carolina Avenue and N. Myrtle Street.
8. S. Carolina. This district applies as follows:
- a. All properties with frontage on the south side of S. Carolina Avenue containing an Old Town future land use designation but excluding those properties that contain corner frontage with S. Carolina Avenue and N. Broadway Street.

The boundary between the CR 512 Old Town district and the CR 512 Old Town - Off Road district shall be determined at time of development application for property fronting CR 512 to allow for parcel aggregation.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, entered into this 28th day of Nov., 2006 between the City of Fellsmere, Florida, a political subdivision of the State of Florida (hereinafter referred to as "City") and Residential Management Palm Beach, a Florida Corporation (hereinafter referred to as "Owner/Developer").

RECITALS

WHEREAS, Owner/Developer is under Contract with Albert H. Kahn, Individually and as Trustee (the "Owner"), to purchase property (hereinafter referred to as the "Property") in Indian River County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference containing 78.77 acres; and

WHEREAS, Owner/Developer desires to develop the Property as a Planned Development District (PDD) for uses allowed under the Comprehensive Plan Land Use designations of Low Density Residential (LDR) and Neighborhood Commercial (NC) (hereinafter referred to as the "Development"); and

WHEREAS, the City has not yet adopted a Planned Development District or Neighborhood Commercial District zoning regulations and the Owner/Developer is willing to assume the risk that such regulations will be adopted and acceptable for its Development; and

WHEREAS, as a part of its plan for annexation, comprehensive plan amendment and rezoning of the Property, Owner/Developer wishes to mitigate negative impacts on abutting land owners and assure the installation of proper public and private facilities and services; and

WHEREAS, the City is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The City shall not be required or obligated in any way to construct or maintain or participate in the construction, cost of construction or maintenance of any improvements (except for maintenance of improvements dedicated to and accepted by the City). The Owner/Developer, its

grantees, successors or assigns in interest or an association and/or assigns satisfactory to the City shall be responsible for the maintenance of all improvements not dedicated to the City.

2. The Owner/Developer agrees to apportion seventy (70) acres as Low Density Residential and eight and seventy-seven one-hundredths (8.77) acres with CR512 frontage as Neighborhood Center.

3. The Owner/Developer shall limit the density to a maximum of 4.58 units per acre in order to achieve a maximum of three hundred and twenty (320) residential units (152 town homes and 168 single family homes) on seventy (70) acres which is consistent with the Low Density Residential future land use classification, provided that the density may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations. No portion of the eight and seventy-seven one-hundredths (8.77) acres requested to be zoned Neighborhood Commercial Center shall be entitled to be used for calculating residential density as provided in the Comprehensive Plan 2020 Policy FLUE B-2.1.

4. The Owner/Developer shall provide ten (10) town-home units and six (6) single family homes (hereinafter collectively referred to as "homes") for sale as affordable housing. Affordable housing shall be defined as follows:

a. Affordable Housing is a dwelling unit for which the mortgage payment, including principal, interest, taxes and insurance (P.I.T.I.) does not exceed forty percent (40%) of the gross income of households that classify as moderate income households, defined as follows:

(i.) A moderate income household has a gross combined income between eighty-one percent (81%) and one hundred twenty percent (120%) of the Indian River County Adjusted Median Income as defined by the Florida Housing Finance Authority.

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Deed restrictions will be required that prohibit the home from being sold at a price which exceeds the threshold for housing that is affordable under Affordable Housing as defined above. For a period of Sixty (60) months after the initial sale, if the home is resold, the sales price shall not be greater than the initial sales price plus 3% of the assessed value for the prior year or the percentage change in the Consumer Price Index from the prior year to the current year, whichever is lower, as calculated on an annual basis by the Indian River County Property Appraiser. The deed restrictions will also prohibit the sale or resale of a home to a buyer who does not qualify under the above definition of moderate income. The terms of the resale restrictions must be included in the public land records so that they are readily identifiable in a routine title search. Applicants must be approved by a qualifying organization as determined by the City Council.

5. Prior to the issuance of the first building permit, the Owner/Developer shall install a City and Indian River County approved traffic signal at the intersection of Broadway and CR512. In lieu of installation of the traffic signal prior to issuance of the first building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the traffic signal. The traffic signal shall be installed within fourteen (14) months. The Cash Bond or Letter of Credit shall be good for eighteen (18) months and shall be in a form approved by the City Attorney.

6. Prior to the approval of any final plat, the Owner/Developer shall construct left turn and right turn lanes into the Development from County Road 512 at each entrance of the Development. In the event any traffic from this Development uses Myrtle Street, left turn and right turn lanes shall be constructed at the Owner/Developer's sole expense at the intersection of Myrtle Street and CR512. In lieu of installation of the left turn and right turn lanes, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the required left turn and right turn lanes. The turn lanes shall be constructed within fourteen (14) months. The Cash Bond or Letter of Credit shall be good for eighteen (18) months and shall be in a form approved by the City Attorney. The Owner/Developer shall construct and pave all roads (City streets) providing access to the Development to standards determined by the City. All roads internal to the Development shall be constructed and paved to such standards as required by the City.

1
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7. Owner/Developer shall comply with all regulations and ordinances of the City. In consideration for being annexed into the City and allowed to develop eight and seventy-seven one-hundredths (8.77) acres for commercial uses and seventy (70) acres for residential use at a density that substantially exceeds the fourteen (14) residential units (on 70 acres) that this Property would be allowed to develop within the unincorporated area of Indian River County, this Agreement constitutes Owner's/Developer's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no "vested rights" against changes to the zoning, the Comprehensive Plan or Land Development Regulations as they may apply to this Property nor may it be relied upon for any "investment backed expectation" as these phrases are used in general and in Chapter 70, Florida Statute (2005), as amended, upon failure of the Owner/Developer to receive final plat approval and record such plat for: (1) at least fifty (50%) percent of Property within three (3) years after the date Ordinance No. 06-26 was passed on second and final reading by the City Council, and (2) at least seventy-five (75%) percent of the Property within four (4) years after Ordinance No. 06-26 was passed on second and final reading by the City Council.

8. Owner/Developer, upon execution of this Agreement, shall pay to the City the cost of recording this Agreement in Indian River County, Florida.

9. Owner/Developer shall be required to install or have installed by private providers, where applicable, all private utilities (electric, cable), surface water or storm water management systems, water and wastewater facilities that relate to the overall Development. All utilities shall be underground.

10. Owner/Developer shall secure solid waste pick-up services to serve the Development.

11. In the event of a violation of any of the provisions contained in this Agreement, the City shall have the right to refuse to issue any further Building Permits or Certificates of Occupancy as the case may be for the entire Development until such violations are corrected and this Agreement may also be enforced by all appropriate Sections of the Code of Ordinances and the Land Development Regulations of the City, as they may be amended, as well as through Code Enforcement action.

12. The Owner/Developer shall implement deed restrictions to include:
- a. Each structure (home, clubhouse or otherwise) shall consist of "on-site" construction, no pre-manufactured structures shall be allowed. Metal buildings are specifically prohibited.
 - b. All homes shall be no less than 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.
 - c. All homes shall have as a minimum an attached one (1) car garage.
 - d. Each structure shall be responsible for and include construction of the adjacent sidewalk built to specifications identified on the recorded plat and approved engineering plans, prior to issuance of a Certificate of Occupancy for such structure.
 - e. A requirement for each property owner to participate in a solid waste pick up service.
 - f. All roads within the Development shall be private.
 - g. The enforcement provisions contained in Paragraph 11 above.
 - h. Affordable homes pursuant to Section 4 above.

13. In lieu of providing seven (7) acres required to meet the ten percent (10%) recreation area within the Development, the Owner/Developer shall pay into the City's Recreation Trust Fund an amount equivalent to the value of seven (7) acres to be used by the City toward public recreational improvements. The value of the seven (7) acres shall be determined by an MAI Appraiser based on the proposed use/density of the final end product. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any building permits.

City of Fellsmere
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14. The Owner/Developer shall construct a City-approved Pedestrian Linkage System within the Development and a sidewalk eight (8) feet in width along the South side of County Road 512 connecting with the existing sidewalk. The sidewalk along CR512 shall be constructed to City/County standards prior to the issuance of the first Certificate of Occupancy for the Development.

15. The Owner/Developer owns land fronting on County Road 512 for this Development, and shall dedicate without compensation, land for the ultimate right-of-way for County Road 512 as determined by the City and Indian River County.

16. The Owner/Developer shall provide an Emergency Response Plan acceptable to the City prior to the issuance of the first Certificate of Occupancy for the Development.

17. Immediately following the recording of the final plat and prior to issuance of the first building permit within the Neighborhood Commercial area, the Owner/Developer shall convey without charge by Warranty Deed, to the City in fee simple ownership two (2) twelve thousand square foot (12,000 sq. ft.) commercial lots ("building pads-site only"), for its own use in order to accommodate growth and development in the City. The Owner/Developer shall also provide at its cost a clean Owners' Policy of Title Insurance to the City for the two (2) lots.

18. The Owner/Developer shall construct both on-site and off-site portable water Supply System Facilities per City specifications and determination. The Owner/Developer shall dedicate such utility improvements to the City. The Owner/Developer shall construct both on-site and off-site Wastewater Collection and Force Main System Facilities per City specifications and determination. The Owner/Developer shall dedicate such utility improvements to the City. Additionally, a permanent standby emergency generator shall be provided with each sewer pump station.

19. All public or private improvements required under the terms of this Agreement or by the City's regulations/codes, with the exception of the internal Pedestrian Linkage System, shall be

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Fellsmere, FL 32948

constructed by the Owner/Developer and approved by the City prior to approval by the City Council of any Final Plat, unless a specific allowance has been provided herein for a Cash Bond or Letter of Credit to guarantee construction of such improvement.

20. The deed restrictions and all documents creating a Property Owners'/Homeowners' Association shall be reviewed and approved by the City Attorney and shall be recorded along with the Final Plat at the Owner's/Developer's expense.

21. The Owner/Developer will work with the City to evaluate opportunities to provide for a "master regional storm water" area to serve both the Development and the City's needs in the area.

22. The provisions of Paragraph 7 above notwithstanding, the Owner/Developer has requested that this Annexation Agreement be approved before the City has had an opportunity to consider an Annexation Ordinance for this Property and take final action thereon. Accordingly, the Owner/Developer acknowledges that this Agreement cannot and does not obligate the City to adopt an Ordinance annexing this Property. The City reserves the right in its sole discretion after further consideration to decline to annex the Property. Immediately upon a decision by the City not to annex the Property, this Annexation Agreement shall be null and void and of no further force or effect and each party releases the other from all future claims of any type whatsoever, whether known or unknown, foreseen or unforeseen, as a result of this Agreement. Should the City adopt an Ordinance annexing this Property into the City, this Paragraph 22 shall be void and of no further legal effect, as of the date such Annexation Ordinance becomes effective.

23. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the Property and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the Property, and be subject to the above referenced conditions as approved by the City Council on August 3, 2006. In the event the Property is not annexed into the City, this Agreement shall be null and void, as provided above.

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WWD_8-7-06

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the date and year first written above.

ATTEST:

Deborah C. Krages
DEBORAH C. KRAGES, CITY CLERK

(S E A L)

CITY OF FELLSMERE, FLORIDA
21 S. Cypress Street
Fellsmere, Florida 32948

Sara J. Savage
SARA J. SAVAGE, MAYOR
As Approved by the Council on August 3, 2006

OWNER

Albert H. Kahn
ALBERT H. KAHN, Individually and as Trustee

OWNER/DEVELOPER

RESIDENTIAL MANAGEMENT PALM BEACH, a Florida Corporation

By: *Michael J. Garofalo*
MICHAEL GAROFALO, its President

STATE OF FLORIDA

COUNTY OF INDIAN RIVER

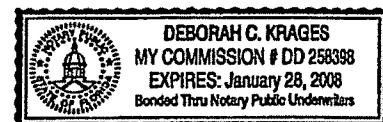
The foregoing instrument was acknowledged before me this 8th day of August, 2006, by SARA J. SAVAGE, Mayor of the CITY OF FELLSMERE, FLORIDA, who is personally known to me or who produced _____ as identification.

(S E A L)

Deborah C. Krages
NOTARY PUBLIC

Print Name:

My Commission Expires:



City of Fellsmere
21 S. Cypress St.
Fellsmere, FL 32948

WFD_8-7-06

STATE OF FLORIDA

COUNTY OF Indian River

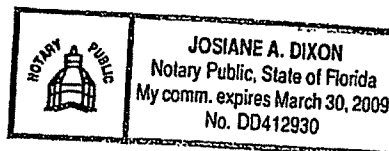
The foregoing instrument was acknowledged before me this 28th day of September, 2006, by MICHAEL GAROFALO, as President of RESIDENTIAL MANAGEMENT PALM BEACH, a Florida Corporation, who is personally known to me or who produced Florida Drivers License as identification.

(S E A L)

Josiane A Dixon
NOTARY PUBLIC

Print Name:

My Commission Expires:



STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 26th day of SEPTEMBER, 2006, by ALBERT H. KAHN, who is personally known to me or who produced _____ as identification.

(S E A L)

Pamela Patteson
NOTARY PUBLIC

Print Name:

My Commission Expires:

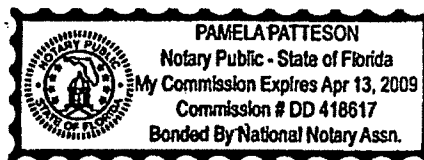


EXHIBIT "A"
ANNEXATION AGREEMENT

1
M The following described land being situated in Indian River County, City of Fellsmere, State of Florida:

LEGAL DESCRIPTION

PARCEL 1:

Tract 1730 lying South of County Road No. 512, less the North 35 feet; Tract 1731 less the North 35 feet; Tract 1762; Tracts 1763 and 1764 lying South of County Road No. 512, all as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 29.05 acres, ±

PARCEL 2:

Tracts 1829, 1830, 1831, 1862, 1863 and 1864, as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 49.72 acres, ±

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Fellsmere, FL 32948

DECLARATION OF COVENANTS AND RESTRICTIONS ON LAND

THIS DECLARATION, made as of the date set forth below by Residential Management Palm Beach, Inc., a Florida Corporation, hereinafter referred to as "Declarant", governs the use of the following described Land lying and situate in Indian River County, Florida:

LEGAL DESCRIPTION

PARCEL 1:

Tract 1730 lying South of County Road No. 512, less the North 35 feet; Tract 1731 less the North 35 feet; Tract 1762, Tracts 1763 and 1764 lying South of County Road No. 512. all as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 29.05 acres

PARCEL 2:

Tracts 1829, 1830, 1831, 1862, 1863 and 1864, as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 49.72 acres

as shown on the map attached hereto, as Exhibit "A", containing 78.77 acres, more or less.

WHEREAS, Declarant is the owner of the Land described herein, which Declarant seeks to annex into the City of Fellsmere, Florida,

NOW, THEREFORE, Declarant hereby declares that all of said Land described above shall be held, sold and conveyed subject to the following restrictions and covenants, which are for the purpose of protecting the value and desirability of the Land, and shall run with said Land and be binding upon all parties having any right, title or interest in the Land or any part thereof, their heirs, successors and assigns, and shall accrue to the benefit of each owner thereof:

1. For a period of ten (10) years from the date of annexation of the Land, Declarant, its successors or assigns, covenant that they shall not apply to rezone the Land, or otherwise seek to change the use of said Land, in any manner that results in a residential use density greater than 4.58 units per

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Fellsmere, FL 32948

acre, or a maximum of Three Hundred Twenty (320) residential units on Seventy (70) acres, provided, however, any portion of the Land used for commercial purposes shall not be entitled to be used for calculating residential density for the remainder of the Land.

2. The City of Fellsmere is designated as a third-party beneficiary of these Covenants and Restrictions, and Declarant stipulates that said third-party beneficiary shall be entitled to refuse any application or proposal submitted in violation of the provisions contained in this Declaration without recourse by Declarant, including but not limited to a suit for injunctive relief and/or damages.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused these presents to be executed in its name by its duly authorized officer, as of this 28th day of September, 2006.

DECLARANT

RESIDENTIAL MANAGEMENT PALM BEACH, INC.,
a Florida Corporation

Signed, sealed & delivered
in the presence of:

Sign:

Mark C. Kloberg

Sign:

Michael J. Garofalo

Printed name: MARK C. KLOBERG

Printed name: Michael Garofalo, its President

Sign:

Will F. Kloberg

Printed name:

Will F. Kloberg A/K/A

Witness

Will F. Kloberg

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

I HEREBY CERTIFY that on this day, before me an Officer duly authorized in the State and in the County aforesaid to take acknowledgements, personally appeared Michael Garofalo, President of RESIDENTIAL MANAGEMENT PALM BEACH, INC., a Florida Corporation, personally known to me to be the person described in the foregoing instrument or who provided Florida Driver's License as identification, who executed the foregoing instrument and acknowledged before me that he executed the same.

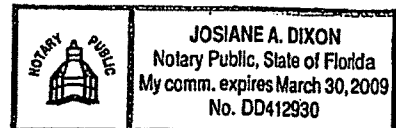
WITNESS my hand and official seal this 28th day of September, 2006.

(S E A L)

Josiane A. Dixon
NOTARY PUBLIC

My Commission Expires:

EXHIBIT "B"
TO ORDINANCE NO. 06-26
~ Page 2 of 2 ~



MORTGAGEE'S JOINDER

City of Fellsmere
21 S. Cypress St.
Fellsmere, FL 32948

The undersigned being the holder of that certain interest arising by virtue of its mortgage from CGV of Fellsmere, LLC, a Florida Limited Liability Company, Mortgagor, recorded on October 18, 2006 in Official Records Book 2091, Page 125, Public Records of Indian River County, Florida, does hereby consent, ratify and join in the execution of the Declaration of Covenants and Restrictions on Land for property owned by CGV of Fellsmere, LLC, consisting of seventy-eight and seventy-seven hundredths (78.77) acres, more or less, located within the City of Fellsmere, Florida (hereinafter, the "Property"), to which this Joinder is attached for the purposes herein expressed and agrees that its mortgage shall be subordinated to the Declaration of Covenants and Restrictions on Land for the Property.

IN WITNESS WHEREOF, the undersigned Florida Corporation has caused this Joinder to be signed by Paula Gagnon, its Vice President, and its seal to be affixed by and with the authority of its Board of Directors this 6TH day of NOVEMBER, 2006.

Signed, sealed & delivered
in the presence of:

STERLING BANK, a Florida Corporation

Sign: Roseann Baker

By: Paula Gagnon
Paula Gagnon, Vice President

Printed name: Roseann Baker

Sign: Ilis Y. Rivera

Printed name: Ilis Y. Rivera

STATE OF FLORIDA

COUNTY OF PAUM BEACH

The foregoing instrument was acknowledged before me this 6TH day of NOVEMBER, 2006, by Paula Gagnon, a Vice President of STERLING BANK, a Florida Corporation, on behalf of the Corporation. She [☒] is personally known to me or [☐] has produced a driver's license issued by the State of _____ as identification.

[SEAL]

NOTARY PUBLIC-STATE OF FLORIDA
Jacqueline I. Deuel
Commission #DD399674
Expires: FEB. 24, 2009
Bonded Thru Atlantic Bonding Co., Inc.

NOTARY PUBLIC
My Commission Expires:

Jason R. Nunemaker
City Manager



Deborah C. Krages
City Clerk

Larry W. Napier, C.G.F.O.
Director of Finance
and Accounting

December 15, 2006

Mr. Michael Garofalo, President
Residential Management Palm Beach, Inc.
9035 Americana Road, Suite 11
Vero Beach, Florida 32960

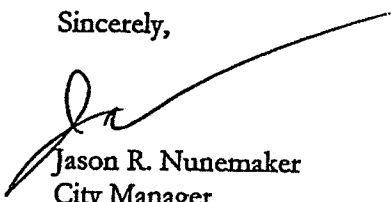
RE: Ordinance 06-26 Annexing 78.77 acres

6-42-06-12
Dear Mr. Nevel:

I am please to enclose the recorded Ordinance 06-26 and its attachments, annexing your property into the City of Fellsmere.

We look forward to working with you on this project. Should you have any questions or require any additional information please do not hesitate to call.

Sincerely,


Jason R. Nunemaker
City Manager

JRN/dck

CC: Ordinance 06-26 file
Warren W. Dill, City Attorney w/attachments
Rochelle W. Lawandales, City Planner w/attachments



FIRST AMENDMENT
TO
ANNEXATION AGREEMENT

THIS FIRST ADMENDMENT TO ANNEXATION AGREEMENT, entered into this _____ day of _____, 2023 between the City of Fellsmere, Florida, a political subdivision of the State of Florida (hereinafter referred to as "City") and CGV of Fellsmere, LLC (hereinafter referred to as "Owner/Developer").

RECITALS

WHEREAS, CGV of Fellsmere, LLC has purchased from Albert H. Kahn, Individually and as Trustee the property previously annexed by Ordinance No. 06-26 (hereinafter referred to as the "Property") in Indian River County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference containing 78.77 acres; and

WHEREAS, Owner/Developer desires to develop the Property as a Planned Development District (PDD) for uses allowed under the Comprehensive Plan Land Use designations of Low Density Residential (LDR) and Neighborhood Commercial (NC) (hereinafter referred to as the "Development"); and

WHEREAS, as a part of its plan for comprehensive plan amendment and rezoning of the Property, Owner/Developer wishes to mitigate negative impacts on abutting land owners and assure the installation of proper public and private facilities and services; and

WHEREAS, the City is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The City shall not be required or obligated in any way to construct or maintain or participate in the construction, cost of construction or maintenance of any improvements (except for maintenance of improvements dedicated to and accepted by the City). The Owner/Developer,

its grantees, successors or assigns in interest or an association and/or assigns satisfactory to the City shall be responsible for the maintenance of all improvements not dedicated to the City.

2. The Owner/Developer agrees to apportion seventy and fifty-six one-hundredths (70.56) acres as Low Density Residential and eight and twenty-one one-hundredths (8.21) acres with CR512 frontage as Neighborhood Center.

3. The Owner/Developer shall limit the density to a maximum of 4.71 units per acre in order to achieve a maximum of three hundred and thirty-two (332) residential units (105 town homes and 227 single family homes) on seventy and fifty-six one-hundredths (70.56) acres which is consistent with the Low Density Residential future land use classification, provided that the density may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations. No portion of the eight and twenty-one one-hundredths (8.21) acres requested to be zoned Neighborhood Commercial Center shall be entitled to be used for calculating residential density over the balance of the Property as provided in the Comprehensive Plan Objective FLUE B-5 Garafolo. The Applicant shall process a Comprehensive Plan Amendment to incorporate the Neighborhood Commercial Center into the Infill Development and Redevelopment overlay district of Objective A-3, Comprehensive Plan. Upon adoption of such amendment, the Neighborhood Commercial Center shall then be allocated residential density as set forth by Comprehensive Plan.

4. The Owner/Developer shall provide ten (10) town-home units and six (6) single family homes (hereinafter collectively referred to as "homes") for sale as affordable housing. Affordable housing shall be defined as follows:

Affordable Housing is a dwelling unit for which the rental payment or mortgage payment for owner occupied, including principal, interest, taxes and insurance (P.I.T.I.) does not exceed forty percent (40%) of the gross income of households that classify as moderate lower income households, where moderate income households is, defined as follows:

A moderate income household has a gross combined income between eighty-one percent (81%) and one hundred twenty percent (120%) of the Indian River County Adjusted Median Income as defined by the Florida Housing Finance Authority.

Deed restrictions will be required that prohibit the home from being sold at a price which exceeds the threshold for housing that is affordable under Affordable Housing as defined above. For a period of Sixty (60) months after the initial sale, if the home is resold, the sales price shall not be greater than the initial sales price plus 3% of the assessed value for the prior year or the percentage change in the Consumer Price Index from the prior year to the current year, whichever is lower, as calculated on an annual basis by the Indian River County Property Appraiser. The deed restrictions will also prohibit the sale or resale of a home to a buyer who does not qualify under the above definition of moderate income. The terms of the resale restrictions must be included in the public land records so that they are readily identifiable in a routine title search. Applicants must be approved by a qualifying organization as determined by the City Council.

5. Prior to the issuance of the 80th residential building permit or as required to meet concurrency, whichever is earlier, the Owner/Developer shall install a City and Indian River County approved traffic signal at the intersection of Broadway and CR512. In lieu of installation of the traffic signal prior to issuance of the first building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to do business in Florida for one hundred twenty-five percent (125%) of the cost of installing the traffic signals so the traffic signals shall be installed within fourteen (14) months. The Cash Bond or Letter of Credit shall be good for eighteen (18) months and shall be in a form approved by the City Attorney.

6. Prior to the approval of any final plat, the Owner/Developer shall construct left turn and right turn lanes into the Development from County Road 512 at each entrance of the Development in accordance with a phasing plan. In the event any traffic from this Development uses Myrtle Street, improvements to Myrtle Street shall be made as per County requirements set forth in the letter dated July 25, 2012 attached hereto as Exhibit "B". In lieu of installation of the left turn and right turn lanes and other required improvements, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to do business in Florida for one hundred twenty-five percent (125%) of the cost of installing the required improvements. The improvements shall be constructed within fourteen (14) months. The Cash Bond or Letter of Credit shall be good for eighteen (18) months and shall be in a form approved by the City Attorney. The Owner/Developer shall construct and pave all roads (City streets) providing access to the Development to standards determined by the City. All roads internal to the Development shall be private and constructed and paved to such standards as required by the City.

7. Owner/Developer shall comply with all regulations and ordinances of the City. In consideration for being annexed into the City and allowed to develop eight and twenty-one one-hundredths (8.21) acres for commercial and mixed uses and seventy and fifty-six one-hundredths (70.56) acres for residential use at a density that substantially exceeds the fourteen (14) residential units (on 70.56 acres) that this Property would have been allowed to develop within the unincorporated area of Indian River County, this Agreement constitutes Owner's/Developer's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no "vested rights" against changes to the zoning, the Comprehensive Plan or Land Development Regulations as they may apply to this Property nor may it be relied upon for any "investment backed expectation" as these phrases are used in general and in Chapter 70, Florida Statute (2023), as amended, upon failure of the Owner/Developer to receive final plat approval and record such plat for: (1) at least fifty (50%) percent of Property within three (3) years after this First Amendment to Annexation Agreement is entered into as first above written.

8. Owner/Developer, upon execution of this Agreement, shall pay to the City the cost of recording this Agreement in the Public Records of Indian River County, Florida.

9. Owner/Developer shall be required to install or have installed by private providers, where applicable, all private utilities (electric, cable), surface water or storm water management systems, water and wastewater facilities that relate to the overall Development. All utilities shall be underground.

10. Owner/Developer shall secure solid waste pick-up services to serve the Development.

11. In the event of a violation of any of the provisions contained in this Agreement, the City shall have the right to refuse to issue any further Building Permits or Certificates of Occupancy as the case may be for the entire Development until such violation(s) are corrected and this Agreement may also be enforced by all appropriate Sections of the Code of Ordinances and the Land Development Regulations of the City, as they may be amended, as well as through Code Enforcement action.

12. The Owner/Developer shall implement deed restrictions to include:

- a. Each structure (home, clubhouse or otherwise) shall consist of "on-site" construction, no pre-manufactured structures shall be allowed. Metal buildings are specifically prohibited.
- b. All homes shall be no less than 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.
- c. All homes shall have as a minimum an attached one (1) car garage.

- d. Each structure shall be responsible for and include construction of the adjacent sidewalk built to specifications identified on the recorded plat and approved engineering plans, prior to issuance of a Certificate of Occupancy for such structure.
- e. A requirement for each property owner to participate in a solid waste pick up service.
- f. All roads within the Development shall be private.
- g. The enforcement provisions contained in Paragraph 10 above.
- h. Affordable homes pursuant to Section 4 above.

13. In lieu of providing seven (7) acres of land required to meet the ten percent (10%) recreation area within the Development, the Owner/Developer shall pay into the City's Recreation Trust Fund an amount equivalent to the value of seven (7) acres of land ready for construction of homes, to be used by the City toward public recreational improvements. The value of the seven (7) acres shall be determined by an MAI Appraiser based on the proposed use/density of the final end product. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development order.

14. The Owner/Developer shall construct a City-approved Pedestrian linkage System within the Development and a sidewalk eight (8) feet in width along the South side of County Road 512 connecting with the existing sidewalk. The sidewalk along CR512 shall be constructed to City/County standards prior to the issuance of the first Certificate of Occupancy for the Development.

15. The Owner/Developer owns land fronting on County Road 512 for this Development, and shall dedicate immediately upon request and without compensation, land for the ultimate right-of-way for County Road 512 as determined by the City and Indian River County.

16. The Owner/Developer shall provide an Emergency Response Plan acceptable to the City prior to the issuance of the first Certificate of Occupancy for the Development.

17. Immediately following the recording of a final plat and prior to issuance of the first building permit within the Neighborhood Commercial area, the Owner/Developer shall convey without charge by Warranty Deed, to the County in fee simple ownership land sufficient to accommodate a Fire Station as designed by Indian River County in order to accommodate this Development and growth and development in the City. The Owner/Developer shall also provide at its cost a clean Owners' Policy of Title Insurance to the County for the land.

18. The Owner/Developer shall construct both on-site and off-site portable water Supply System Facilities per City specifications and determination. The Owner/Developer shall dedicate the portion of such utility improvements desired by the City to the City. The Owner/Developer shall construct both on-site and off-site Wastewater Collection and Force Main System Facilities per City specifications and determination. The Owner/Developer shall dedicate the portion of such utility improvements desired by the City to the City. Additionally, a permanent standby emergency generator shall be provided with each sewer pump station.

19. All public or private improvements required under the terms of this Agreement or by the City's regulations/codes, with the exception of the internal Pedestrian Linkage System, shall be constructed by the Owner/Developer and approved by the City prior to approval by the City Council of any Final Plat, unless a specific allowance has been provided herein for a Cash Bond or Letter of Credit to guarantee construction of such improvement.

20. The deed restrictions and all documents creating a Property Owners'/Homeowners' Association shall be reviewed and approved by the City Attorney and shall be recorded in the Public Records along with the Final Plat at the Owner's/Developer's expense.

21. The Owner/Developer will work with the City to evaluate opportunities to provide for a "master regional storm water" area to serve both the Development and the City's needs in the area.

22. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the Property and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the Property and be subject to the above referenced conditions as approved by the City Council on August 9, 2006, and as amended by this First Amendment to Annexation Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the date and year first written above.

ATTEST:

Witnesses:

Witnesses:

Witnesses:

Witnesses:

CITY OF FELLSMERE, FLORIDA

21 S. Cypress Street

Fellsmere, Florida 32948

By: _____
Joel Tyson, Mayor

By: _____
Maria F. Suarez-Sanchez, City Clerk

OWNER/DEVELOPER

CGV of Fellsmere, LLC

By: _____
Donald T. Cohen, Manger

By: _____
Joanna Verderame, Manager

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Joel Tyson, Mayor, who is ☐ personally known to me or ☐ has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Donald T. Cohen, Manager of CGV of Fellsmere, LLC, who is ☐ personally known to me or ☐ has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Joanna Verderame, Manager of CGV of Fellsmere, LLC, who is ☐ personally known to me or ☐ has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

EXHIBIT "A"
TO
FIRST AMENDMENT
TO
ANNEXATION AGREEMENT

The following described land being situated in Indian River County, City of Fellsmere, State of Florida:

LEGAL DESCRIPTION

PARCEL 1:

Tract 1730 lying South of County Road No. 512, less the North 35 feet; Tract 1731 less the North 35 feet; Tract 1762; Tracts 1763 and 1764 lying South of County Road No. 512, all as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 29.05 acres, ±.

PARCEL 2:

Tracts 1829, 1830, 1831, 1862, 1863 and 1864, as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 49.72 acres, ±

City of Fellsmere City Council
Agenda Request Form

Meeting Date: January 4, 2024

Agenda item# 12(b)

<input type="checkbox"/> PUBLIC HEARING <input type="checkbox"/> Ordinance on Second Reading <input type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> ORDINANCE ON FIRST READING <input type="checkbox"/> GENERAL APPROVAL OF ITEM <input type="checkbox"/> Other:	<input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> DISCUSSION <input type="checkbox"/> BID/RFP AWARD <input type="checkbox"/> CONSENT AGENDA
---	---

SUBJECT: Conditional Use approval with Major Relief to allow for permanent food truck, outdoor dining, and other site improvements to existing retail uses on site.

RECOMMENDED MOTION/ACTION: Conduct 1st Reading for Resolution #2024-03 for the Conditional Use approval with Major Relief subject to conditions set forth in Section 3 of the Resolution 2024-03 and set a 2nd Reading and Public Hearing date for February 1, 2024.

Approved by City Manager _____ **Date:** _____

Originating Department: Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments: 1. CC Resolution. #2024-03,
Department Review: <input checked="" type="checkbox"/> City Attorney _____ <input checked="" type="checkbox"/> Comm. Dev. _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone <u> X </u> or Not applicable in this case <u> </u> (Please initial one.)

Submittal information: Council meets on the first and third Thursday's of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background: The applicant, Mr. Eric Nuno, owns a property addressed as 32 N. Broadway. The 0.58-acre site was developed in 2005 with an OTD, Old Town District Future Land Use designation and a OTD Zoning classification. The applicants have requested Condition Use approval to allow a permanent food truck to be placed at the site. The project is consistent with the Comprehensive Plan and all concurrency requirements of the City. Site specific design relief is provided for in Section 4 of Resolution 2024-03 and entails the following:

- Section 5.3 (DD) That alcohol may be served at the site subject to receipt of all required local and state permits and licenses.
- Section 7.2(G) Relief from the parking space requirement from 21 required spaces to 18 provided spaces subject to Payment in Lieu of Parking as required by the Land Development Code at a reduced rate of \$3,500 per space.
- Section 9.3(A0(5)(a) Relief from the minimum 4:12 rood slope requirement for the existing building and 2:12 rood slope requirement for the proposed front porch structure.
- Section 9.3(B)(3)(a)(2) Relief to allow one (1) money transfer vending machine (ATM) to be placed at the front of a principal building located to the north end of the existing porch. All other machines dispensing or containing merchandise shall be located to the side of the principal structure.
- Section 9.3(I)(6) Waive payments for all improvements to the adjacent alleyway swale.

- Section 9.4(A)(2)(a) Relief from the first floor of the establishment matching the same elevation as the sidewalk along N. Broadway.
- 9.4(B)(1)(b) Deferral from required access from the rear alleyway until the rear alleyway is constructed. Upon completion of the alleyway, the removal of the existing driveway abutting Broadway Street is required and shall be complete within sixty (60) days. The Applicant shall be responsible for any and all repairs to restoration the Broadway sidewalk system impacted by the driveway.
- 9.4(B)(4) Relief from the 0-3' Front setback requirement. The new structure will have a setback at approximately 16.25'. ??????
- 9.4(C)(1) Payment in lieu of providing planting and maintenance of Street trees along Broadway Street due to future construction. The City will procure, install, and maintain the required trees at a later date. Payment shall be \$150/Inch of required tree caliper which equals \$1,135.0. Payment shall be provided within twelve months of approval.
- Section 9.4(G)(1) Relief from the Civic Space requirement as the site is already developed to promote on-street searing and gathering space.
- Memorialize that no new Open Space (interior) trees will be required as a result of the development provided that the existing exceptional specimen trees found on site (Live Oaks) are kept and maintained in a manner consistent with the Land Development Code.

**RESOLUTION
NO. 2024-03**

A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, PERTAINING TO THE GRANTING MAJOR RELIEF BY CONDITIONAL USE PERMIT AND SITE PLAN APPROVAL FOR ONE (1) MOBILE FOOD VENDING UNIT OWNED BY FRUTERIA NUNO, LLC LOCATED AT 32 NORTH BROADWAY IN THE NORTH BROADWAY OVERLAY DISTRICT; PROVIDING FOR RATIFICATION; CONSISTENCY WITH THE COMPREHENSIVE PLAN AND THE LAND DEVELOPMENT CODE; APPROVAL OF CONDITIONAL USE PERMIT AND SITE PLAN; CONDITIONS OF APPROVAL; REPEAL OF CONFLICTING PROVISIONS; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Fruteria Nuno, LLC (hereinafter the “Applicant”) have applied for a Conditional Use Permit (“CUP”) and Site Plan approval for a parcel of land described in Exhibit ‘A’ attached hereto and by this reference made a part hereof (the “Property”); and

WHEREAS, the Applicant has applied for a Conditional Use Permit and Site Plan approval for one (1) Mobile Food Vending Unit for the Property; and

WHEREAS, the Planning and Zoning Commission heard the Applicant’s request and received the input, comments and evidence from all interested persons and determined that the Conditional Use Permit and Site Plan were consistent with the applicable provisions of the Comprehensive Plan 2035 and Land Development Code and thereafter recommended approval of the Conditional Use Permit and Site Plan at their _____, 2024 meeting; and

WHEREAS, the City Council has received the input, comments and evidence from all interested persons, citizens, and affected persons; and

WHEREAS, the City Council has determined that the approval of the Applicant's request for a Conditional Use Permit and Site Plan are consistent with the Goals, Objectives, and Policies of the Comprehensive Plan, the Land Development Code and the Code of Ordinances of the City of Fellsmere as required in Section 17.19C of the Land Development Code (“LDC”); and

WHEREAS, the City Council has determined that the approval of the Site Plan is consistent with Article XIV of the Land Development Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fellsmere, Indian River County, Florida, as follows

SECTION 1. RATIFICATION. The above recitals are hereby ratified, confirmed and adopted as legislative findings of the City Council.

SECTION 2. CONSISTENT WITH COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE. The Conditional Use Permit Application is consistent with the general purpose, goals, objectives, policies and standards of the Comprehensive Plan 2035, Land Development Code and the Code of Ordinance of the City of Fellsmere. The following findings of fact are made:

- a. The proposed conditional use will not have an undue adverse effect upon nearby property.
- b. The proposed conditional use is compatible with the existing or planned character of the neighborhood in which it would be located.
- c. All reasonable steps have been taken to minimize any adverse effect of the proposed conditional use on the immediate vicinity through building design, site design, landscaping, and screening.
- d. The proposed conditional use will be constructed, arranged, and operated so as not to interfere with the development and use of neighboring property, in accordance with applicable district regulations.
- e. The proposed conditional use will be served by adequate public facilities and services, including roads, police protection, fire protection, solid waste disposal, water, sewer, drainage structures, parks and mass transit.

SECTION 3. APPROVAL OF CONDITIONAL USE PERMIT AND SITE PLAN. Subject to the requirements and conditions set forth in Section 4 of this Resolution, the Conditional Use Permit and Site Plan for one (1) Mobile Food Vending Unit for the Property located at 32 North Broadway Street and more particularly described in Exhibit 'A', are hereby approved.

SECTION 4. CONDITIONS OF APPROVAL. The approval of the Conditional Use Permit and Site Plan are subject to and expressly conditioned on the continuous satisfaction of, and compliance with, the following conditions and requirements:

1. Before commencement of development, the Applicant shall obtain all Federal, State, County and Local permits as may be applicable to any new development, redevelopment, or use of the Property and to continuously keep such permits current and in good standing. Issuance of this development order by the City does not create any right on the part of the Applicant to obtain a permit from a Federal, State, County or Local agency and does not create any liability on the part of the City for issuance of a development permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a Federal, State, County or Local agency or undertakes actions that result in a violation of Federal, State, County or Local law. See Section 166.033 F. S.

2. After the first year following the issuance of a Certificate of Occupancy or a final inspection for the improvements, the City Council shall have the authority to hold hearings at any time to review the Mobile Food Vending Units activity for compliance with all conditions and requirements of approval and all applicable ordinances and resolutions of the City. If the use of the Property is not in compliance, the City Council may amend the Conditions of Approval, revoke or suspend the Local Business Tax Receipt (occupational license), terminate the Final Site Plan and Conditional Use, or refer the matter to the Code Enforcement Special Master as a code violation for other sanctions as deemed appropriate.
3. The use, occupancy, development, or redevelopment of the Property shall be limited to and in accordance with the Site Plan attached as Exhibit 'B' and this Resolution. Where specific provisions in this Resolution or in the Land Development Code are not addressed on the Site Plan, the specific provisions of this Resolution or in the Land Development Code shall apply to the development on the Property.
4. All public or private improvements required under the terms of this Resolution shall be constructed at the expense of and by the Applicant as approved by the City.
5. Noncompliance with the following sections of the Land Development Code is approved:
 - A. 5.3(DD) Alcohol may be served subject to receipt of all required local and state permits and licenses.
 - B. 7.2(G) Relief from the parking space requirement from 21 required spaces to 18 provided spaces subject to Payment in Lieu of Parking as required by the Land Development Code rate of \$3,500.00 per space.
 - C. 9.3(A)(5)(a) Relief from the minimum 4:12 roof slope requirement for the existing building and 2:12 roof slope requirement for the proposed porch structure(s).
 - D. 9.3(B)(3)(a)(2) Relief to allow one (1) money transfer vending machine and one (1) other machine dispensing or containing merchandise. The money transfer vending machine shall be placed at the front porch of the principal building and at its north end. The propane tank shall be placed on the side of the principal building.
 - E. 9.3(I)(6)-Waive payment for improvements to the adjacent alleyway swale.

- F. 9.4(A)(2)(a) Relief from the first floor of the establishment matching the same elevation as the sidewalk along N. Broadway.
 - G. 9.4 (B)(1)(b) Deferral from requiring access from the rear alleyway until the rear alleyway is constructed. Upon completion of the alleyway, the removal of the existing driveway abutting Broadway Street is required and shall be completed within sixty (60) days. The Applicant shall be responsible for any and all repairs or restoration of the Broadway sidewalk system impacted by the driveway.
 - H. 9.4(B)(4) Relief from the 0-3' Front setback requirement. The new structure will have a setback at approximately +/- 16.25'.
 - I. 9.4(C)(1) Payment in lieu planting and maintenance of Street Trees along Broadway due to future construction. The City will procure, install and maintain required trees at a later date. Payment shall be \$150.00 of required caliper for a total cost of \$1,125.00. Payment shall be made to the City within twelve months of effective date of this Resolution.
 - J. 9.4(G)(1) Relief from the Civic Space requirement as the site is developed to promote on-street seating and gathering space.
 - K. Memorialize that no new Open Space (interior) trees will be required as a result of the development provided that the existing exceptional specimen trees found on site (Live Oaks) are kept and maintained in a manner consistent with the Land Development Code.
6. The Applicant shall install the required landscaping not omitted thru relief that meets the Old Town District (OTD) overlay requirements within twelve (12) months of the effective date of this Resolution. The applicant shall prepare a landscape plan for review and approval by the City no later than thirty (30) days prior to installation of required landscaping.
 7. The Applicant shall install one handicap parking space with ADA path to main entrance to serve the development within ninety (90) days of the effective date of this Resolution.
 8. The Applicant shall obtain a driveway/patio permit for the installation of new brick-paver patio and/or concrete sidewalks.
 9. The Applicant shall remove all improvements upon the Property that are in conflict with the Final Site Plan and Landscape Plan and return such areas to sod or landscaping.
 10. Concurrent with the construction of any portion of the brick paver or concrete outdoor dining pad/gazebo, the Applicant shall construct an ADA compliant access to the proposed patio area from the North Broadway sidewalk.

11. The Applicant is proposing to use a stabilized millings surface for the proposed parking area. The Applicant shall maintain the millings surface parking free of grass or weed intrusions and keep the millings surface in a neat and orderly arrangement confined only to the areas shown on the Final Site Plan. At the sole discretion of the City, the Applicant shall convert the millings surface parking spaces to an alternative City-approved stabilized surface within sixty (60) days of receiving written notification from the City.
12. All new signs, site lighting and all site furnishings will require compliance with the sign, lighting, and architectural standards of the OTD, Old Town Overlay District to the extent signs, lighting and site furnishings are so regulated. Signage on umbrellas or street furniture is prohibited.
13. No outdoor sales shall be conducted from a vehicle, trailer, truck, or other device and/or vehicle, with the exception of the singular approved food truck.
14. Prior to the public hearing for this Resolution the Applicant shall execute a Non-Exclusive Cross Access/Cross Parking/Stormwater Easement and Agreement with the City of Fellsmere in the form attached hereto as Exhibit 'C' and deliver same to the City Clerk. The Agreement shall be recorded in the Public Records at the cost of the Applicant.
15. The Applicant shall subscribe for and maintain solid waste pick up service from a solid waste hauler having a franchise with the City and shall have constructed the required dumpster enclosure within ninety (90) days of the completion of the alley improvements.
16. Prior to the public hearing for this Resolution the Applicant shall execute a Unity of Title across all lots within the Property in the form attached hereto as Exhibit 'D' and deliver same to the City Clerk. The Unity of Title shall be recorded in the Public Records at the expense of the Applicant.
17. Prior to the public hearing for this Resolution the Applicant shall convey to the City without charge a five (5') foot wide alley dedication along the west property line, as more particularly described in Exhibit 'E' attached hereto and deliver same to the City Clerk.
18. The Applicant shall comply with all requirements in Section 5.3 DD Mobile Food Vending Units of the Land Development Code.

19. As provided in Section 9.3(G)(7) - The Applicant shall provide payment in the amount of \$2,100 into the city's transit fund prior to commencement of Phase II.
20. Applicant shall obtain a Business Tax Receipt (BTR) from the City of Fellsmere for the one (1) mobile food vending unit and all other businesses or vending units on site.
21. If the parking provided on site is determined by the City, at its sole discretion, to be inadequate to serve the demand for parking generated by the use of the Property, the Applicant shall be required to limit the use of the Property commensurate with the available parking to support such use or construct additional parking within sixty (60) days of receipt of written directive of the City.
22. The Applicant shall enter into a required payment agreement with the City for the Indian River County Impact Fees requirement for Restaurant Uses prior to issuance of a building permit for each phase of construction as noted below:

PHASE I- Construction of a 16.5'x 33' food truck pad equaling \$12,432.42.

PHASE II- Conversion of a 10'x 10' porch area for outdoor seating equaling \$1,930.50.

PHASE III- Construction of a 20'x 20' pergola/seating area equaling \$7,744.00.

The applicant will be required to pay for any upcharges if at any time the IRC fee schedule is amended.

23. As provided in Section 17.19 I, Land Development Code, the Conditional Use Permit and Site Plan granted by this Resolution may be revoked for:

A. Violation of any condition or requirement imposed in this Resolution.

B. Upon complaint and proof of adverse effect on adjacent properties.

The Conditional Use Permit and Site Plan may be revoked only after the City Council holds a public hearing, unless the permittee consents to a revocation of the Conditional Use Permit and Site Plan. If the permittee provides written consent to the revocation to the City Manager or designee, he shall revoke the Conditional Use Permit and Site Plan and notify the City Council of the revocation.

24. A violation of any of the conditions or requirements of approval shall constitute a code violation subject to enforcement through the Code Enforcement Special Master, unless a different remedy is specifically provided in any such condition or requirement, in which case such different remedy shall either supersede this provision or be in addition to code enforcement action as determined by the City.

SECTION 5. REPEAL OF CONFLICTING PROVISIONS. All previous resolutions or parts thereof, which conflict with the provisions of this Resolution, to the extent of such conflict, are superseded and repealed.

SECTION 6. SEVERABILITY. If any section, part of a sentence, paragraph, phrase or word of this Resolution is for any reason held to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this Resolution without such unconstitutional, invalid or inoperative part.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was moved for adoption by Council Member _____
_____. The motion was seconded by Council Member _____
_____ and, upon being put to a vote, the vote was as follows:

The Mayor thereupon declared this Resolution duly passed and adopted this
_____ day of _____, 2024.

CITY OF FELLSMERE, FLORIDA

Joel Tyson, Mayor

ATTEST:

Maria Sanchez-Suarez, City Clerk

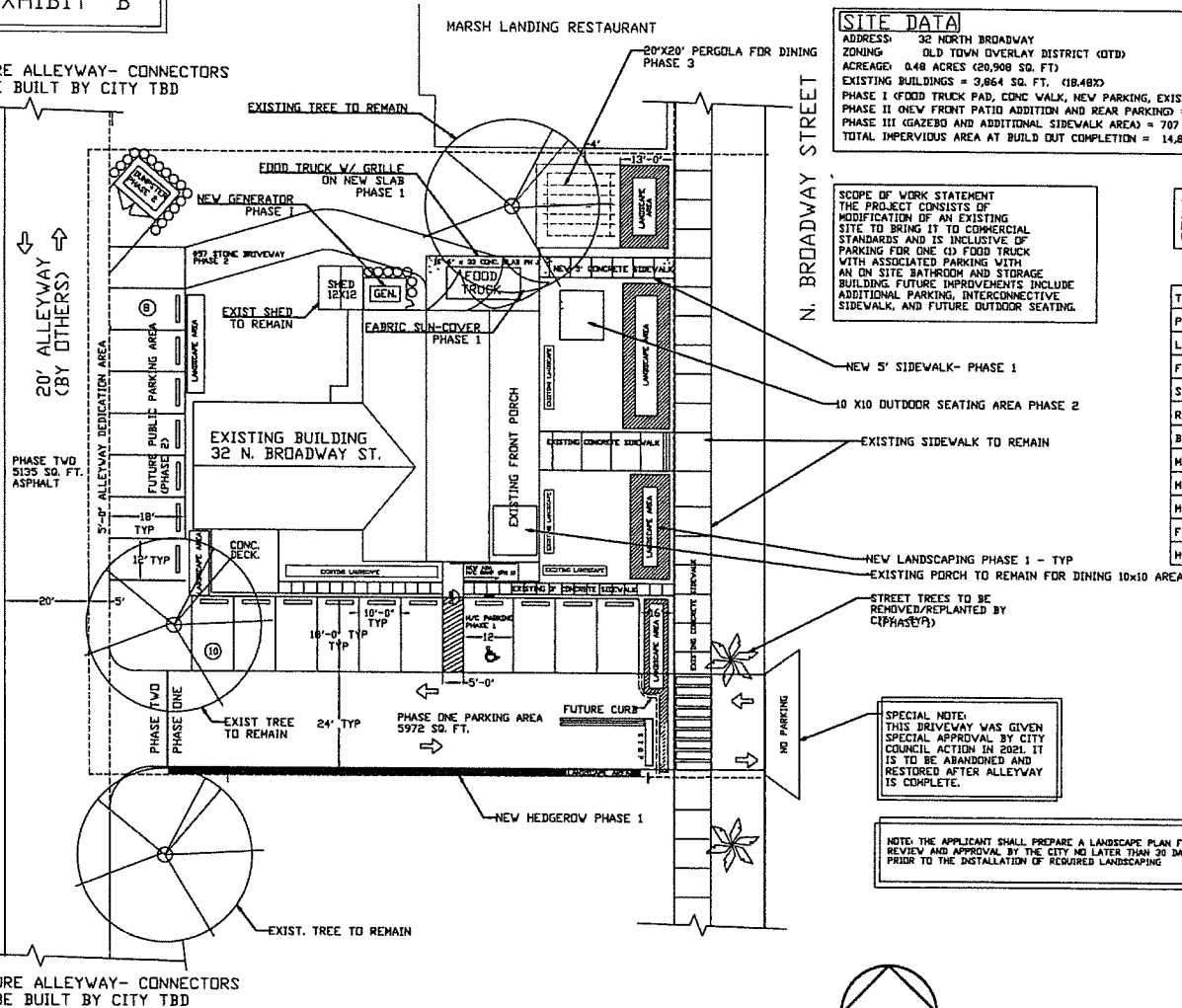
EXHIBIT "A"
TO
RESOLUTION NO. 2024-03

Legal Description of Real Property

Lots 10, 11,12, 13,14, and 15, Block 97, Town of Fellsmere, according to the map or plat thereof, as recorded in Plat Book 2, Page(s) 3 and 4, of the Public Records of St. Lucie County, Florida now lying in Indian River County, Florida.

EXHIBIT 'B'

FUTURE ALLEYWAY- CONNECTORS
TO BE BUILT BY CITY TBD



SITE DATA

ADDRESS: 32 NORTH BROADWAY
ZONING: OLD TOWN OVERLAY DISTRICT (OTD)
ACREAGE: 0.48 ACRES (20,908 SQ. FT.)
EXISTING BUILDINGS = 3,864 SQ. FT. (18,482)
PHASE I (FOOD TRUCK PAD, CONC WALK, NEW PARKING, EXIST PATIO CONV.) = 7,622.58 SQ. FT. (36,452)
PHASE II (NEW FRONT PATIO ADDITION AND REAR PARKING) = 2,688.75 SQ. FT. (12,855)
PHASE III (GAZEBO AND ADDITIONAL SIDEWALK AREA) = 707 SQ. FT. (3,382)
TOTAL IMPERVIOUS AREA AT BUILD OUT COMPLETION = 14,882.33 71.1% (100% ALLOWED)

SCOPE OF WORK STATEMENT
THE PROJECT CONSISTS OF
MODIFICATION OF AN EXISTING
SITE TO BRING IT TO COMMERCIAL
STANDARDS AND IS INCLUSIVE OF
PARKING FOR ONE (1) FOOD TRUCK
WITH ASSOCIATED PARKING WITH
AN ON SITE BATHROOM AND STORAGE
BUILDING. FUTURE IMPROVEMENTS INCLUDE
ADDITIONAL PARKING, INTERCONNECTIVE
SIDEWALK, AND FUTURE OUTDOOR SEATING.

TRAFFIC IMPACT STATEMENT
BASED UPON ITE MANUAL V 11.0 THE TOTAL
NUMBER OF DAILY TRIPS IS EXPECTED TO BE
UNDER THE IRC 400 COUNT THRESHOLD.

TABLE 9.4.B.4 'SITE DEVELOPMENT STANDARDS'

PROPOSED	REQUIRED
LOT WIDTH	100' 50'-0" MIN.
FRONT SETBACK	16' 0'-3' FEET
SIDE SETBACK	5' 0' OR 25'
REAR SETBACK	5' < OR EQUAL TO 5'
BUILDING LENGTH	62' LESS THAN 200'
MAX HEIGHT 1 STORIES	3 STORIES MAX. HT.
MAX COVERAGE	85% 100% ALLOWED
MAX SIZE 3000 SQ.FT.	UP TO 20,000 ALLOWED
FLOOR AREA RATIO 1	UP TO 2.0 ALLOWED
MIN. UNIT SIZE 3000SF	500 SF. MINIMUM

SPECIAL NOTE:
THIS DRIVEWAY WAS GIVEN
SPECIAL APPROVAL BY CITY
COUNCIL ACTION IN 2021. IT
IS TO BE ABANDONED AND
RESTORED AFTER ALLEYWAY
IS COMPLETE.

NOTE: THE APPLICANT SHALL PREPARE A LANDSCAPE PLAN FOR
REVIEW AND APPROVAL BY THE CITY NO LATER THAN 30 DAYS
PRIOR TO THE INSTALLATION OF REQUIRED LANDSCAPING



PROPOSED SITE PLAN - FRUITERIA NUNO 32 N. BROADWAY ST.
1"= 30'-0"

FRUITERIA NUNO DEVELOPMENT PLAN 32 N. BROADWAY

DATE	FINAL DEVELOPMENT PLAN	DATE

Site Name and Address

Project Name and Address
FRUITERIA NUNO
32 N. BROADWAY
TALLAHASSEE, FL 32304

DATE	DATE
SEPT 9, 2023	A-1
AS NOTED	1 OF 1

**EXHIBIT “C”
TO
RESOLUTION NO. 2024-03**

**NON-EXCLUSIVE CROSS ACCESS/CROSS PARKING AND STORMWATER EASEMENT
AND AGREEMENT**

**NON-EXCLUSIVE
CROSS ACCESS/CROSS PARKING/STORMWATER EASEMENT
AND
AGREEMENT**

THIS AGREEMENT, is made to be effective as of the ____ day of _____, 2024, by FRUTERIA NUNO, LLC, whose address is _____, Florida 32949, hereinafter referred to as "Grantor" to the CITY OF FELLSMERE, FLORIDA, a municipal corporation existing under the laws of the State of Florida, whose address is 22 S. Orange Street, Fellsmere, Florida 32948, hereinafter referred to as "Grantee" or "City". When referring to both the Grantor and Grantee they shall be known as the "Parties".

*Whenever used herein the term Grantor and Grantee include all parties to this instrument and their heirs, legal representatives, successors and assigns.

RECITALS

The Grantor is the owner of that certain parcel of land located at 32 North Broadway, Fellsmere, Florida 32948, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter referred to as "Grantor's Land". The Grantor has requested relief from certain Land Development Code provisions and the City's Land Development Code requires all on-site parking to be provided with cross-parking and cross access allowances. As a condition of granting relief from certain provisions of the Land Development Code and to affect the ability to utilize the parking for cross access and on-site cross parking, the Grantor gives this Non-Exclusive Cross Access/Cross Parking/Stormwater Easement and Agreement to the City for the purpose of conveying stormwater from the Grantor's Land and other lands eligible to utilize the City-owned stormwater treatment facility to the City owned stormwater treatment facility, providing for cross-access to and from neighboring parcels along the parking drive aisle and providing cross parking within a portion of the on-site parking area.

AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00), the approval of a conditional use for a mobile food vending unit, the approval of a site plan, the mutual covenants herein contained, and for other valuable and good consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Ratification. The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.
2. Easements. Grantor hereby grants and conveys to Grantee, its successors and assigns the following authorizations, easements, rights, and interest in gross:
 - i. A perpetual, non-exclusive easement across, over, through and under that certain easement area as described in Exhibit "B" attached hereto and by this reference made a part thereof, hereinafter referred to as "Cross Access Area";

- ii. for use by the general public for the purpose of ingress and egress for pedestrian, bicycle and vehicular traffic to and from the parcels of land (lots) adjoining the Grantor's Land in order to facilitate traffic flow between the properties and reduce traffic movement to and from the adjoining street. The Grantee shall have the right at its sole discretion, but not the obligation to construct, reconstruct, improve, maintain and repair the Cross Access Area; and
 - iii. A perpetual, non-exclusive easement across, over, through and under that certain easement area as described in Exhibit "C" attached hereto and by this reference made a part thereof, hereinafter referred to as "Cross Parking Area"; for use by the general public for the purpose of parking and ingress and egress for pedestrian, bicycle and vehicular traffic to and from the parcels of land (lots) adjoining the Grantor's Land in order to facilitate traffic flow between the properties and reduce traffic movement to and from the adjoining street; and
 - iv. A perpetual, non-exclusive easement across, over, through and under that certain area as described in Exhibit "D" attached hereto and by this reference made a part thereof, hereinafter referred to as "Stormwater Area", for use by the City to collect, convey and store stormwater runoff from the Grantor's Land and pass through stormwater runoff from other lands. The Grantee shall have the right at its sole discretion, but not the obligation to obtain permits, construct, reconstruct, improve, maintain and repair the Stormwater Area.
3. Grantee's Rights and Responsibilities. The Grantee shall have the right to keep the Cross Access Area, Cross Parking Area and Stormwater Area, hereinafter collectively referred to as "Easement Areas", free from (a) trees, undergrowth or other obstructions, whether natural or artificial; (b) anything which may constitute a hazard or endanger persons attempting to permit, construct, reconstruct, improve, expand, reduce, install, operate, maintain, repair, replace or inspect the Easement Area; (c) anything which may increase the cost of permitting, constructing, reconstructing, improving, expanding, reducing, installing, operating, maintaining, repairing, replacing, inspecting or using any of the improvements within the Easement Areas and (d) anything which may unreasonably interfere with any of Grantee's easements, rights and interest under this Agreement. Should Grantee elect at its sole discretion to implement any of the Grantees rights hereunder regarding the Cross Access Area and/or Stormwater Area, the Grantee shall be responsible for making such applications and executing such permits as may be necessary, and paying all costs necessary to permit, construct, reconstruct, improve, expand, reduce, install, operate, maintain, repair, replace or inspect the Cross Access Area and/or Stormwater Area.
4. Grantor's Use and Acknowledgment. The Grantor hereby reserves for itself the right to use the Easement Areas; however, the Grantor's use or use by their guests, invitees, lessees, licensees or others may not (i) violate any provision of this Agreement; (ii) constitute a hazard or endanger persons attempting to construct, reconstruct, improve, expand, reduce, install, operate, maintain, repair, replace or inspect within the Easement Areas; (iii) obstruct passage or the use of the Easement Areas or (iv) unreasonably interfere with any of Grantee's easements, rights or interest under this Agreement. The Grantor acknowledges and confirms that the rights and interests granted and retained herein do not relieve the Grantor from

continuing to comply with all conditions of all approvals of development permits that have been or may be issued for the Grantor's Land and all rules and regulations that govern the use of the Grantor's Land. Grantor may obtain a permit and construct the Cross Access Area, Cross Parking Area and/or Stormwater Area. In the event, Grantor constructs improvements in support of the Cross Access Area, Cross Parking Area and/or Stormwater Area that lies outside the boundaries of the Grantor's Land, the Grantor shall be reimbursed on a pro-rata share basis for the cost of said off-site improvements through a cost reimbursement agreement with the City, the terms of which shall be determined by the City. The Grantee shall be responsible for making such applications and executing such permits as are necessary for the construction of the Cross Parking Area and shall be responsible for all costs and expenses necessary to permit, construct, reconstruct, improve, expand, reduce, install, operate, maintain, repair, replace or inspect the Cross Parking Area.

5. Common Permit. Grantor acknowledges and confirms their ongoing requirements to comply with St. Johns River Water Management District requirements to obtain a General Permit and, if applicable, an Environmental Resource Permit for development or redevelopment of the Grantor's Land. Grantor further acknowledges and confirms that the cost of all permits and all permit conditions that may be imposed by the St. Johns River Water Management District as part of the Grantor's General Permit shall be the financial responsibility of the Grantor. The Grantor further acknowledges and confirms their authorization of the Grantee to make application and execute such permits on Grantor's behalf as may be necessary to implement the Grantees rights granted hereunder.
6. Sovereign Immunity. Nothing contained in this Agreement shall be construed as a waiver of any immunity from, or limitation of, liability the Grantee may have under the Doctrine of Sovereign Immunity of Section 768.28 Florida Statutes, as amended. In the event any claim or lawsuit is brought against the Grantee the Grantee shall not be liable to pay a claim or a judgment by any one person or entity or any claim or judgment or portions thereof which when totaled with all other claims or judgments paid arising out of the same incident or occurrence, which exceeds the amount of liability as set forth in Section 768.28 Florida Statutes, provided that the payment of said claim(s) shall be further limited to the actual amount of insurance proceeds paid for such claim(s). Nothing in this Agreement shall be construed as consent by the Grantee to be sued by third parties in any matter whether arising out of this Agreement or anything else whatsoever.
7. Taxes. Grantor shall pay all personal property taxes and assessments on its property and structures. Grantor shall also pay all real estate taxes levied against Grantor's Land and improvements thereon. Grantor shall pay all other fees and assessments arising out of Grantor's use of the Easement Areas. Real estate taxes mean all real estate taxes (ad valorem taxes), public and special governmental charges and assessments.
8. Ownership. Grantor hereby covenants with Grantee that the Grantor is lawfully seized of the above-described land (Grantor's Land) in fee simple, and that the Grantor has good right and lawful authority to convey the easements established

hereby.

9. Miscellaneous. The following provisions shall govern this Agreement:

A. Entire agreement. This is the parties' entire agreement. It contains all agreed on terms and conditions regarding the subject matter hereof and supersedes all prior agreements, representations, communications and understandings, which shall have no further force and effect.

B. Amendment. This Agreement shall not be amended or modified at any time except by a writing duly executed by each of the parties.

C. Successors and Assigns. The easement(s) conveyed, granted and declared herein shall be deemed to run with title to the Grantor's Land in perpetuity and are freely assignable by the parties hereto.

D. Severability. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, it shall be excised and the balance of the Agreement shall be given full force and effect, and no other provision or provisions herein contained shall be invalid, inoperative, or unenforceable to any extent whatsoever, if, absent the excised portion, the Agreement remains within the parties' intent.

E. Notices. All notices, consents, requests, instructions, approvals, and other communications provided for herein and all legal process in regard hereto shall be validly given, made or served, if in writing and delivered personally, sent by registered or certified mail (return receipt requested), postage prepaid, or legibly transmitted by facsimile or electronic transmission (with proof of sending) and promptly confirmed by mail, to the respective addresses set forth above, as the case may be. Notice duly made hereunder shall be effective the day of its having been delivered personally, faxed or electronically transmitted and two (2) days after its having been mailed. The addresses may be changed by giving notice of the new address as set forth herein.

F. Rules of Construction. The following rules govern this Agreement: (a) Gender, etc. As used herein, the singular includes the plural, the plural includes the singular, and the use of any gender shall be deemed to include the opposite and neutral gender as the case may be; (b) Captions. All section, schedule and exhibit headings are inserted herein for the convenience of the parties and shall not be used in any way to modify, limit, construe, or otherwise affect the interpretation of this Agreement; (c) Construction. The parties shall be deemed to have participated equally in preparation of this Agreement. Neither this Agreement nor any provision herein shall be construed more strictly for or against either party by reason of that party's responsibility for drafting. (d) Reference to Agreement. *Hereof, herein, or hereunder* and other compounds of *here* shall mean and refer to the entire agreement and not to any particular section, article, provision, exhibit, or paragraph unless so required by context.

G. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida without regard to conflicts of laws. Notwithstanding

this, if judicial proceedings between the parties are necessary to enforce or interpret the provision hereof, venue for such judicial proceedings shall be in the State Courts of Florida in Indian River County or the Federal courts having jurisdiction over Florida for the Southern District of Florida.

H. Right to Injunction Relief. Grantor and Grantee recognize that Grantee would suffer substantial and irreparable damage in the event of a breach of Grantor's agreements contained herein. Grantor and Grantee recognize that in the event of a breach of this Agreement, Grantee shall be entitled to an injunction to enforce the terms of this Agreement and that such injunction relief shall be in addition to any other rights that may be available to the Grantee.

I. Parties in interest. This Agreement shall be binding upon the parties hereto and upon their respective heirs, personal representatives, successors-in-title and assigns, and all other persons, parties or legal entities claiming by, through or under such parties.

J. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

K. Effect of Invalidation. If any particular provision of this Agreement is held to be invalid by any court, the validity of such provision shall not affect the validity of the remaining provisions hereof.

L. Waiver. Each of the parties may, by written notice to the other, (i) extend the time for the performance of any of the obligations or other actions of the other party; (ii) waive compliance with any of the covenants of the other party contained in this Agreement; or (iii) waive, in whole or in part, performance of any of the obligations of the other party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or similar breach.

M. Attorneys' Fees. In the event of litigation regarding the enforcement, breach or interpretation of this Agreement or otherwise to enforce its provisions, the prevailing party in such proceedings shall be entitled to recover, in addition to any relief the court may allow, reasonable attorneys' fees, paralegal charges and costs incurred in connection with such proceeding, including those incurred in connection with any related appellate or bankruptcy proceeding.

N. Headings. The headings of sections and subsections are only for convenient reference and will not be deemed to limit, construe, affect, modify or alter the meaning of the sections or subsections.

O. Time of Essence. Time is of the essence of Grantor's and Grantee's obligations under this Agreement.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set Grantor's and Grantee's hand and seal the day and year above written.

Signed, sealed and delivered
in the presence of:

WITNESSES AS TO ALL:

Print Name: _____
Address: _____

Print Name: _____
Address: _____

Print Name: _____
Address: _____

Print Name: _____
Address: _____

GRANTOR:
FRUTERIA NUNO, LLC, a Florida
limited liability company

Maria R. Nuno, Member

Francisco Nuno, Member

Eric Alejandro Nuno, Sr., Member

Juan Nuno, Member

GRANTEE:

CITY OF FELLSMERE, FLORIDA

Joel Tyson, Mayor

ATTEST:

Maria F. Suarez-Sanchez, City Clerk

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of [] physical presence
or [] online notarization this ____ day of _____, 202__, by Joel Tyson, Mayor of City of
Fellsmere, Florida, who are personally known to me or who have produced _____ as
identification.

SEAL

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 202_, by Maria R. Nuno, Francisco Nuno, Eric Alejandro Nuno, Sr., and Juan Nuno all Managers of Fruteria Nuno, LLC, who are personally known to me or who have produced _____ as identification.

SEAL

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

2023.12.12 Matter No. 23-139 Cross access-Cross Parking-Stormwater Easement and Agreement Exhibit "C"

EXHIBIT "A"

GRANTOR'S LAND

Lots 10, 11, 12, 13, 14, and 15, Block 97, Town of Fellsmere, according to map or plat thereof, as recorded in Plat Book 2, Pages 3 and 4, of the Public Records of St. Lucie (now Indian River) County, Florida.

EXHIBIT "B"

CROSS ACCESS AREA

The Parties agree that the location of the Cross Access Area has not been determined by the City and when the City determines the location of the Cross Access Area an amendment to this Agreement will be prepared replacing this Exhibit "B" with a new Exhibit "B" setting forth the legal description of Cross Access Area. The Amendment shall be recorded in the Public Records of Indian River County, Florida.

EXHIBIT "C"

CROSS PARKING AREA

The Parties agree that the location of the Cross Parking Area has not been determined by the City and when the City determines the location of the Cross Parking Area an amendment to this Agreement will be prepared replacing this Exhibit "C" with a new Exhibit "C" setting forth the legal description of Cross Parking Area. The Amendment shall be recorded in the Public Records of Indian River County, Florida.

EXHIBIT “D”

STORMWATER AREA

The Parties agree that the location of the Stormwater Area has not been determined by the City and when the City determines the location of the Stormwater Area an amendment to this Agreement will be prepared replacing this Exhibit “D” with a new Exhibit “D” setting forth the legal description of Stormwater Area. The Amendment shall be recorded in the Public Records of Indian River County, Florida.

**EXHIBIT “D”
TO
RESOLUTION NO. 2024-03**

UNITY OF TITLE

**This Instrument Prepared by
And Return to:**

Warren W. Dill, Esq.
Dill, Evans & Rhodeback
1565 US Highway 1
Sebastian, FL 32958

DECLARATION OF UNITY OF TITLE

WHEREAS, the undersigned is/are the fee simple owner(s) of the following described property situated in the City of Fellsmere, Indian River County, Florida.

Legal Description(s):

Lots 10, 11, 12, 13, 14 and 15, Block 97, Town of Fellsmere, according to the map or plat thereof as recorded in Plat Book 2, Page 3, Public Records of St Lucie County, Florida, now lying in Indian River County, Florida. Less and except the Westerly five (5) feet of the above described lands conveyed to the City of Fellsmere, Florida by Warranty Deed recorded simultaneously with this Declaration of Unity of Title.

Also known as 32 North Broadway, Fellsmere, Florida 32948.

WHEREAS, the undersigned has made application for issuance of a development order on a project designed in a manner which necessitates the above-described parcels being held in single ownership as one entire tract.

NOW, THEREFORE, the undersigned declares that such parcels will in the future, be held and treated as one single parcel of land, which is not to be divided for sale or transfer of ownership other than as a single tract unless then current Land Development Code requirements are met.

The covenant stated herein shall be considered binding on all future successors and owners and shall be strictly enforceable by the City of Fellsmere, Florida in accordance with its Land Development Code and shall remain valid until such time as released in writing by an authorized representative of the City of Fellsmere, Florida, by recorded document.

The Unity of Title was prepared for the use and benefit of the City of Fellsmere and it is not intended for use by any other party.

WITNESS the hand and seal of the undersigned, this ____ day of _____, 2024.

NAME(S) OF ALL OWNER(S): Fruteria Nuno, LLC, a Florida limited liability company

MAILING ADDRESS: 32 North Broadway, Fellsmere, Florida 32948

Signed and sealed in the presence of the following witnesses:

AS TO ALL:

Signature of Witness: _____
Printed Name of Witness: _____
Address: _____

Signature of Witness: _____
Print Name of Witness: _____
Address: _____

Signature of Owner: _____
Print Name: Maria R. Nuno, Member

Signature of Owner: _____
Print Name: Francisco Nuno, Member

Signature of Owner: _____
Print Name: Eric Alejandro Nuno, Sr., Member

Signature of Owner: _____
Print Name: Juan Nuno, Member

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me on this ____ day of _____, 2024 by means of ☐ physical presence or ☐ online notarization, by Francisco Nuno, Maria R. Nuno, Eric Alejandro Nuno, Sr., and Juan Nuno all Managers of Fruteria Nuno, LLC, who are personally known to me or whom have produced _____ as identification.

SEAL

Notary Public, State of Florida
Printed Name: _____
Commission Number: _____
Commission Expiration: _____

EXHIBIT “E”

RESOLUTION NO. 2024-03

5’ REAR ALLEYWAY DEDICATION

WARRANTY DEED

SALE: NONE
DOC. STAMPS: \$.70

This Instrument was prepared by
and should be returned to:

City of Fellsmere, Florida
Community Development Department
22 South Orange Street
Fellsmere, Florida 32948

.....(Space above this line for recording data).....

WARRANTY DEED

This Warranty Deed executed this _____ day of _____, 2024, by **Fruteria Nuno, LLC**, a Florida limited liability company, whose address is 32 North Broadway, Fellsmere, Florida 32948, hereinafter referred to as "Grantor" to **City of Fellsmere, Florida**, a municipal corporation existing under the laws of the State of Florida, whose post office address is 22 S. Orange Street, Fellsmere, Florida, 32948, hereinafter referred to as "Grantee".

WITNESSETH that said Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Indian River County, Florida, to-wit:

SEE ATTACHED EXHIBIT "A" TO WARRANTY DEED

Together with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Subject to governmental regulations, covenants, rights of way, restrictions, easements and reservations of record, if any, but this provision shall not operate to reimpose the same, and taxes for this year and subsequent years.

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the proper use, benefit and behoof of the Grantee forever.

And the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that the land is free of all encumbrances, except taxes accruing subsequent to December 31, 2023.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
in our presence:

AS TO ALL:

WITNESSES:

Sign: _____

Print: _____

Address: _____

GRANTOR
FRUTERIA NUNO, LLC

Francisco Nuno, Member

Maria R. Nuno, Member

EXHIBIT "E"

Sign: _____
Print: _____
Address: _____

Eric Alejandro Nuno, Sr., Member

Juan Nuno, Member

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Francisco Nuno, Maria R. Nuno, Eric Alejandro Nuno, Sr., and Juan Nuno, all Managers of Fruteria Nuno, LLC, who are ☐ personally known to me or ☐ have produced as identification.

"SEAL"

Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____

My Commission No. is: _____

2023.12.12 Matter No. 23-139 Warranty Deed – Exhibit E

EXHIBIT "E"

EXHIBIT "A"

The Western five feet (5') of Lots 10, 11, 12, 13, 14 and 15, Block 97, Town of Fellsmere, according to the map or plat thereof as recorded in Plat Book 2, Page 3, Public Records of St. Lucie County, Florida, now lying in Indian River County, Florida.

City of Fellsmere City Council
Agenda Request Form

Meeting Date: January 4, 2024

Agenda Item No. 12(c)

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input type="checkbox"/> ORDINANCE ON FIRST READING

<input type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input checked="" type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input type="checkbox"/> CONSENT AGENDA |
|---|---|

SUBJECT: Florida Division of Emergency Management Statewide Mutual Aid Agreement - 2023

RECOMMENDED MOTION/ACTION: Approve Resolution 2024-13 authorizing the adoption of Statewide Mutual Aid Agreement – 2023 and authorizing the Mayor to execute same.

Approved by City Manager Mark Mathes **Date:** 12/28/23

Originating Department: Grants	Costs: \$ 0	Attachments: Resolution 2024-13 Agreement
Department Review: <input checked="" type="checkbox"/> City Attorney Warren Dill <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>X</u> Please initial one.

Submittal information: Council meets on the first and third Thursdays of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore, the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

The State of Florida Division of Emergency Management has requested that the City enter into the attached Statewide Mutual Aid Agreement – 2023, which will replace the version entered into on July 5, 2018.

This Resolution authorizes the request, provision, and receipt of interjurisdictional mutual assistance in the case of a disaster or emergency.

**RESOLUTION
NO. 2024-13**

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA AUTHORIZING THE ADOPTION OF THE STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT STATEWIDE MUTUAL AID AGREEMENT (“SMAA”) AND AUTHORIZING THE MAYOR TO EXECUTE SAME; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the State of Florida Emergency Management Act, Chapter 252, authorizes the State and its political subdivisions to provide emergency aid and assistance in the event of a disaster or emergency; and

WHEREAS, the statutes also authorize the State to coordinate the provision of any equipment, services or facilities owned or organized by the State or its political subdivisions for use in the affected area upon the request of the duly constituted authority of the area; and

WHEREAS, the City of Fellsmere entered into a Statewide Mutual Aid Agreement on July 5, 2018; and

WHEREAS, the State of Florida, Division of Emergency Management has issued a 2023 Statewide Mutual Aid Agreement to replace the 2018 agreement; and

WHEREAS, this Resolution authorizes the request, provision, and receipt of interjurisdictional mutual assistance in accordance with the Emergency Management Act, Chapter 252, among political subdivisions within the State;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fellsmere, Indian River County, Florida, as follows:

SECTION 1. RATIFICATION. The above recitals are hereby ratified, confirmed and adopted as legislative findings of the City Council.

SECTION 2. AUTHORIZATION. In order to maximize the prompt, full and effective use of resources of all participating governments in the event of an emergency or disaster, Council approves the adoption of the SMAA and authorizes the Mayor to execute and enter into the SMAA on behalf of the City of Fellsmere.

SECTION 3. REPEAL OF CONFLICTING PROVISIONS. All previous resolutions or parts thereof, which conflict with the provisions of this Resolution, to the extent of such conflict, are superseded and repealed.

SECTION 4. SEVERABILITY. If any section, part of a sentence, paragraph, phrase or word of this Resolution is for any reason held to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this Resolution without such unconstitutional, invalid or inoperative part.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was moved for adoption by Council Member _____ . The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor, Joel Tyson	_____
Council Member Fernando Herrera	_____
Council Member Inocencia Hernandez	_____
Council Member Gerald W. Renick	_____
Council Member Jessica Salgado	_____

The Mayor thereupon declared this Resolution duly passed and adopted this _____ day of January, 2024.

CITY OF FELLSMERE, FLORIDA

ATTEST: _____
Joel Tyson, Mayor

Maria Sanchez-Suarez, City Clerk



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

STATEWIDE MUTUAL AID AGREEMENT - 2023

This Agreement is an acknowledgment of receipt by the Florida Division of Emergency Management ("the Division") and the local government ("Participating Party") signing this Agreement. Execution of this agreement replaces all previous iterations and is active until a new agreement is drafted and requested by The Division.

This Agreement is based on the existence of the following conditions:

- A. The State of Florida is vulnerable to a wide range of emergencies and disasters that are likely to cause the disruption of essential services and the destruction of the infrastructure needed to deliver those services.
- B. Such emergencies and disasters often exceed the emergency response and recovery capabilities of any one county or local government.
- C. Such incidents may also give rise to unusual and unanticipated physical and technical needs which a local government cannot meet with existing resources, but that other local governments within the State of Florida may be able to provide.
- D. The Emergency Management Act, chapter 252, *Florida Statutes*, provides each local government of the state the authority to develop and enter into mutual aid agreements within the state for reciprocal emergency aid in case of emergencies too extensive to be dealt with unassisted, and through such agreements ensure the timely reimbursement of costs incurred by the local governments which render such assistance.
- E. Pursuant to chapter 252.32, *Florida Statutes*, the Division renders mutual aid among the political subdivisions of the state to carry out emergency management functions and responsibilities.
- F. Pursuant to chapter 252, *Florida Statutes*, the Division has the authority to coordinate and direct emergency management assistance between local governments and concentrate available resources where needed.

Based on the existence of the foregoing conditions, the Parties agree to the following articles:

ARTICLE I: DEFINITIONS

As used in this Agreement, the following expressions shall have the following meanings:

- A. The "Agreement" is this Agreement, which shall be referred to as the Statewide Mutual Aid Agreement ("SMAA").



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- B. The "Division" is the Florida Division of Emergency Management.
- C. A "Requesting Party" to this Agreement is a Participating Party who requests assistance under this agreement.
- D. An "Assisting Party" to this Agreement is a Participating Party who provides assistance to a Requesting Party under this agreement.
- E. The "Period of Assistance" is the time during which an Assisting Party renders assistance to a Requesting Party under this agreement and includes the time necessary for the resources and personnel of the Assisting Party to travel to the place specified by the Requesting Party and the time necessary to return to their place of origin.
- F. A "Mission" is a documented emergency response activity performed during a Period of Assistance, usually in reference to one operational function or activity.
- G. A "local government" is any educational district, special district, or any entity that is a "local governmental entity" within the meaning of section 11.45(1)(g), *Florida Statutes*.
- H. An "educational district" is any school district within the meaning of section 1001.30, *Florida Statutes*, and any Florida College System Institution or State University within the meaning of section 1000.21, *Florida Statutes*.
- I. A "special district" is any local or regional governmental entity which is an independent special district within the meaning of section 189.012(3), *Florida Statutes*, established by local, special, or general act, or by rule, ordinance, resolution, or interlocal agreement.
- J. A "tribal council" is the respective governing bodies of the Seminole Tribe of Florida and Miccosukee Tribe of Indians recognized as special improvement district by section 285.18(1), *Florida Statutes*.
- K. An "interlocal agreement" is any agreement between local governments within the meaning of section 163.01(3)(a), *Florida Statutes*.
- L. A "Resource Support Agreement" as used in this Agreement refers to a supplemental agreement of support between a Requesting Party and an Assisting Party.
- M. "Proof of work" as used in this Agreement refers to original and authentic documentation of a single individual or group of individuals' emergency response activity at a tactical level.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- N. "Proof of payment" as used in this Agreement refers to original and authentic documentation of an emergency response expenditure made by an Assisting Party.
- O. A "Reimbursement Package" as used in this Agreement refers to a full account of mission response documentation supported by proof of work and proof of payment.
- P. Any expressions not assigned definitions elsewhere in this Agreement shall have the definitions assigned them by the Emergency Management Act, Chapter 252, *Florida Statutes*.

ARTICLE II: APPLICABILITY OF THE AGREEMENT

Any Participating Party, including the Division, may request assistance under this Agreement for a "major disaster" or "catastrophic disaster" as defined in section 252.34, *Florida Statutes*, minor disasters, and other such emergencies as lawfully determined by a Participating Party.

ARTICLE III: INVOCATION OF THE AGREEMENT

In the event of an emergency or anticipated emergency, a Participating Party may request assistance under this Agreement from any other Participating Party or the Division if, in the judgement of the Requesting Party, its own resources are inadequate to meet the needs of the emergency or disaster.

- A. Any request for assistance under this Agreement may be oral, but within five (5) calendar days must be confirmed in writing by the Requesting Party. All requests for assistance under this Agreement shall be transmitted by the Requesting Party to another Participating Party or the Division. If the Requesting Party transmits its request for Assistance directly to a Participating Party other than the Division, the Requesting Party and Assisting Party shall keep the Division advised of their activities.
- B. The Division shall relay any requests for assistance under this Agreement to such other Participating Parties as it may deem appropriate and coordinate the activities of the Assisting Parties to ensure timely assistance to the Requesting Party. All such activities shall be carried out in accordance with the State's Comprehensive Emergency Management Plan.

ARTICLE IV: RESPONSIBILITIES OF REQUESTING PARTIES

To the extent practicable, all Requesting Parties shall provide the following information to their respective county emergency management agency, the Division, and the intended Assisting Party or Parties. In providing such information, Requesting Parties should utilize Section I of the



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

Resource Support Agreement (RSA) Form, available via the [Division approved documents SharePoint site](#)¹.

- A. A description of the Mission to be performed by the Assisting Party;
- B. A description of the resources and capabilities needed to complete the Mission successfully;
- C. The location, date, and time personnel and resources from the Assisting Party should arrive at the incident site, staging area, facility, or other location designated by the Requesting Party;
- D. A description of the health, safety, and working conditions expected for deploying personnel;
- E. Lodging and meal availability;
- F. Any logistical requirements;
- G. A description of any location or facility outside the territorial jurisdiction of the Requesting Party needed to stage incoming resources and personnel;
- H. The location date, and time for personnel of the Requesting Party to meet and receive the personnel and equipment of the Assisting Party; and
- I. A technical description of any communications equipment needed to ensure effective information sharing between the Requesting Party, any Assisting Parties, and all relevant responding entities.

ARTICLE V: RESPONSIBILITIES OF ASSISTING PARTIES

Each Party shall render assistance under this Agreement to any Requesting Party to the extent practicable that its personnel, equipment, resources, and capabilities can render assistance. If upon receiving a request for assistance under this Agreement a Party determines that it has the capacity to render some or all of such assistance, it shall provide the following information without delay to the Requesting Party, the Division, and the Assisting Party's County emergency management agency. In providing such information, the Assisting Party should utilize the Section II of the Resource Support Agreement (RSA) Form, available via the [Division approved documents SharePoint site](#).

¹ FDEM approved documents such as activity logs and mutual aid forms can be found at:
https://portal.floridadisaster.org/projects/FROC/FROC_Documents/Forms/AllItems.aspx?View=%7B6F3CF7BD%2DC0A4%2D4BE2%2DB809%2DC8009D7D0686%7D



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- A. A description of the personnel, equipment, supplies, services and capabilities it has available, together with a description of the qualifications of any skilled personnel;
- B. An estimate of the time such personnel, equipment, supplies, and services will continue to be available;
- C. An estimate of the time it will take to deliver such personnel, equipment, supplies, and services to the location(s) specified by the Requesting Party;
- D. A technical description of any communications and telecommunications equipment available for timely communications with the Requesting Party and other Assisting Parties;
- E. The names and contact information of all personnel whom the Assisting Party has designated as team leaders or supervisors; and
- F. An estimated cost for the provision of assistance.

ARTICLE VI: RENDITION OF ASSISTANCE

The Requesting Party shall afford the emergency response personnel of all Assisting Parties, while operating within the jurisdictional boundaries of the Requesting Party, the same powers, duties, rights, and privileges, except that of arrest unless specifically authorized by the Requesting Party, as are afforded the equivalent emergency response personnel of the Requesting Party. Emergency response personnel of the Assisting Party will remain under the command and control of the Assisting Party, but during the Period of Assistance, the resources and responding personnel of the Assisting Party will perform response activities under the operational and tactical control of the Requesting Party.

- A. Unless otherwise agreed upon between the Requesting and Assisting Party, the Requesting Party shall be responsible for providing food, water, and shelter to the personnel of the Assisting Party. For Missions performed in areas where there are insufficient resources to support responding personnel and equipment throughout the Period of Assistance, the Assisting Party shall, to the fullest extent practicable, provide their emergency response personnel with the equipment, fuel, supplies, and technical resources necessary to make them self-sufficient throughout the Period of Assistance. When requesting assistance, the Requesting Party may specify that Assisting Parties send only self-sufficient personnel and resources but must specify the length of time self-sufficiency should be maintained.



STATE OF FLORIDA

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Kevin Guthrie, Executive Director

- B. Unless the Requesting Party has specified the contrary, it shall, to the fullest extent practicable, coordinate all communications between its personnel and the responding personnel of the Assisting Parties, and shall determine and share the frequencies and other technical specifications of all communications equipment to be used, as appropriate, with the deployed personnel of the Assisting Parties.
- C. Personnel of the Assisting Party who render assistance under this Agreement shall receive the usual wages, salaries, and other compensation as are normally afforded to personnel for emergency response activities within their home jurisdiction, and shall have all the immunities, rights, interests, and privileges applicable to their normal employment. If personnel of the Assisting Party hold local licenses or certifications limited to the jurisdiction of issue, then the Requesting Party shall recognize and honor those licenses or certifications for the duration of the Period of Assistance.

ARTICLE VII: REIMBURSEMENT

After the Period of Assistance has ended, the Assisting Party shall have 45 days to develop a full reimbursement package for services rendered and resources supplied during the Period of Assistance. All expenses claimed to the Requesting Party must have been incurred in direct response to the emergency as requested by the Requesting Party and must be supported by proof of work and proof of payment.

To guide the proper documentation and accountability of expenses, the Assisting Party should utilize the Claim Summary Form, available via the [Division approved documents SharePoint site](#) as a guide and summary of expense to collect information to then be formally submitted for review by the Requesting Party.

To receive reimbursement for assistance provided under this agreement, the Assisting Party shall provide, at a minimum, the following supporting documentation to the Requesting Party unless otherwise agreed upon between the Requesting and Assisting Parties:

- A. A complete and authentic description of expenses incurred by the Assisting Party during the Period of Assistance;
- B. Copy of a current and valid Internal Revenue Service W-9 Form;
- C. Copies of all relevant payment and travel policies in effect during the Period of Assistance;
- D. Daily personnel activity logs demonstrating emergency response activities performed for all time claimed (for FDEM reimbursement Division approved activity logs will be required for personnel activity claims);



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- E. Official payroll and travel reimbursement records for all claimed personnel expenses;
- F. Neat and comprehensive fringe benefit calculations for each position class or category of claimed personnel;
- G. Written justification for all additional expenses/purchases incurred during the Period of Assistance;
- H. Proof of payment for additional/miscellaneous expenses incurred during the Period of Assistance
- I. Equipment activity logs demonstrating equipment use and operation in support of emergency response activities for all time claimed (for FDEM reimbursement Division approved forms will be required for equipment activity claims);
- J. Proof of reimbursement to all employees who incurred emergency response expenses with personal money;
- K. Justification for equipment repair expenses; and
- L. Copies of any applicable supporting agreements or contracts with justification.

If a dispute or disagreement regarding the eligibility of any expense arises, the Requesting Party, Assisting Party, or the Division may elect binding arbitration. If binding arbitration is elected, the Parties must select as an arbitrator any elected official of another Participating Party, or any other official of another Participating Party whose normal duties include emergency management, and the other Participating Party shall also select such an official as an arbitrator, and the arbitrators thus chosen shall select another such official as a third arbitrator.

The three (3) arbitrators shall convene by teleconference or videoconference within thirty (30) calendar days to consider any documents and any statements or arguments by the Division, the Requesting Party, or the Assisting Party concerning the protest, and shall render a decision in writing not later than ten (10) business days after the close of the hearing. The decision of a majority of the arbitrators shall bind the parties and shall be final.

If the Participating Parties do not elect binding arbitration, this agreement and any disputes arising thereunder shall be governed by the laws of the State of Florida and venue shall be in Leon County, Florida. Nothing in this Agreement shall be construed to create an employer-employee relationship or a partnership or joint venture between the participating parties. Furthermore, nothing contained herein shall constitute a waiver by either Party of its sovereign immunity or the provisions of section 768.28, Florida Statutes. Nothing herein shall be construed as consent by either Party to be sued by third parties.



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Kevin Guthrie, Executive Director

ARTICLE VIII: COST ELIGIBLE FOR REIMBURSEMENT

The costs incurred by the Assisting Party under this Agreement shall be reimbursed as needed to make the Assisting Party whole to the fullest extent practicable.

- A. Employees of the Assisting Party who render assistance under this Agreement shall be entitled to receive from the Assisting Party all their usual wages, salaries, and any and all other compensation for mobilization, hours worked, and demobilization. Such compensation shall include any and all contributions for insurance and retirement, and such employees shall continue to accumulate seniority at the usual rate. As between the employees and the Assisting Party, the employees shall have all the duties, responsibilities, immunities, rights, interests, and privileges incident to their usual employment. The Requesting Party shall reimburse the Assisting Party for these costs of employment.
- B. The costs of equipment supplied by the Assisting Party shall be reimbursed at the rental rate established in FEMA's Schedule of Equipment, or at any other rental rate agreed to by the Requesting Party. In order to be eligible for reimbursement, equipment must be in actual operation performing eligible work. The labor costs of the operator are not included in the rates and should be approved separately from equipment costs. The Assisting Party shall pay for fuels, other consumable supplies, and repairs to its equipment as needed to keep the equipment in a state of operational readiness. Rent for the equipment shall be deemed to include the cost of fuel and other consumable supplies, maintenance, service, repairs, and ordinary wear and tear. With the consent of the Assisting Party, the Requesting Party may provide fuels, consumable supplies, maintenance, and repair services for such equipment at the site. In that event, the Requesting Party may deduct the actual costs of such fuels, consumable supplies, maintenance, and services from the total costs otherwise payable to the Assisting Party. If the equipment is damaged while in use under this Agreement and the Assisting Party receives payment for such damage under any contract of insurance, the Requesting Party may deduct such payment from any item or items billed by the Assisting Party for any of the costs for such damage that may otherwise be payable.
- C. The Requesting Party shall pay the total costs for the use and consumption of any and all consumable supplies delivered by the Assisting Party for the Requesting Party under this Agreement. In the case of perishable supplies, consumption shall be deemed to include normal deterioration, spoilage, and damage notwithstanding the exercise of reasonable care in its storage and use. Supplies remaining unused shall be returned to the Assisting Party in usable condition upon the close of the Period of Assistance, and the Requesting Party may deduct the cost of such returned supplies from the total costs billed by the Assisting Party for such supplies. If the Assisting Party agrees, the Requesting Party may also replace any and all used consumable supplies with like



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Ron DeSantis, Governor

Kevin Guthrie, Executive Director

supplies in usable condition and of like grade, quality and quantity within the time allowed for reimbursement under this Agreement.

- D. The Assisting Party shall keep records to document all assistance rendered under this Agreement. Such records shall present information sufficient to meet the audit requirements specified in the regulations of FEMA and any applicable circulars issued by the State of Florida. Upon reasonable notice, the Assisting Party shall make its records available the Requesting Party for inspection or duplication between 8:00 a.m. and 5:00 p.m. on all weekdays, except for official holidays.

ARTICLE IX: INSURANCE

Each Participating Party shall determine for itself what insurance to procure, if any. With the exceptions in this Article, nothing in this Agreement shall be construed to require any Participating Party to procure insurance.

- A. Each Participating Party shall procure employers' insurance meeting the requirements of the Workers' Compensation Act, as amended, affording coverage for any of its employees who may be injured while performing any activities under the authority of this Agreement, and shall be provided to each Participating Party.
- B. Any Participating Party that elects additional insurance affording liability coverage for any be provided to each Participating Party. activities that may be performed under the authority of this Agreement shall
- C. Subject to the limits of such liability insurance as any Participating Party may elect to procure, nothing in this Agreement shall be construed to waive, in whole or in part, any immunity any Participating Party may have in any judicial or quasi-judicial proceeding.
- D. Each Participating Party which renders assistance under this Agreement shall be deemed to stand in the relation of an independent contractor to all other Participating Parties and shall not be deemed to be the agent of any other Participating Party.
- E. Nothing in this Agreement shall be construed to relieve any Participating Party of liability for its own conduct and that of its employees.
- F. Nothing in this Agreement shall be construed to obligate any Participating Party to indemnify any other Participating Party from liability to third parties.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

ARTICLE X: GENERAL REQUIREMENTS

Notwithstanding anything to the contrary elsewhere in this Agreement, all Participating Parties shall be subject to the following requirements in the performance of this Agreement:

- A. All Participating Parties shall allow public access to all documents, papers, letters, or other materials subject to the requirements of the Public Records Act, as amended, and made or received by any Participating Party in conjunction with this Agreement.
- B. No Participating Party may hire employees in violation of the employment restrictions in the Immigration and Nationality Act, as amended.
- C. No costs reimbursed under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Legislature of the State of Florida or any of its agencies.
- D. Any communication to the Division under this Agreement shall be sent via either email, the Division of Emergency Management's Enterprise System (DEMES), or mail to the Response Bureau, Florida Division of Emergency Management, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.
- E. Any communication to a Participating Party shall be sent to the official or officials specified by that Participating Party. For the purpose of this section, any such communication may be sent by the U.S. Mail, e-mail, or other electronic platforms.

ARTICLE XI: EFFECTS OF AGREEMENT

Upon its execution by a Participating Party, this Agreement shall have the following effect with respect to that Participating Party:

- A. The execution of this Agreement by any Participating Party which is a signatory to the Statewide Mutual Aid Agreement of 1994 shall terminate the rights, interests, duties, responsibilities, and obligations of that Participating Party under the Statewide Mutual Aid Agreement of 1994, but such termination shall not affect the liability of the Participating Party for the reimbursement of any costs due under the Statewide Mutual Aid Agreement of 1994, regardless of whether such costs are billed or unbilled.
- B. The execution of this Agreement by any Participating Party which is a signatory to the Public Works Mutual Aid Agreement shall terminate the rights, interests, duties, responsibilities and obligations of that Participating Party under the Public Works Mutual Aid Agreement, but such termination shall not affect the liability of the Participating Party for the reimbursement of any costs due under the Public Works Mutual Aid Agreement,



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

regardless of whether such costs are billed or unbilled.

- C. Upon the activation of this Agreement by the Requesting Party, this Agreement shall supersede any other existing agreement between it and any Assisting Party to the extent that the former may be inconsistent with the latter.
- D. Upon its execution by any Participating Party, this Agreement will continue in effect for one (1) year from its date of execution by that Participating Party, and it shall automatically renew each year after its execution, unless within sixty (60) calendar days before the renewal date the Participating Party notifies the Division, in writing, of its intent to withdraw from the Agreement.
- E. The Division shall transmit any amendment to this Agreement by sending the amendment to all Participating Parties not later than five (5) business days after its execution by the Division. Such amendment shall take effect not later than sixty (60) calendar days after the date of its execution by the Division and shall then be binding on all Participating Parties. Notwithstanding the preceding sentence, any Participating Party who objects to the amendment may withdraw from the Agreement by notifying the Division in writing of its intent to do so within that time in accordance with section E of this Article.
- F. A Participating Party may rescind this Agreement at will after providing the other Participating Party a written SMAA withdrawal notice. Such notice shall be provided at least 30 days prior to the date of withdrawal. This 30-day withdrawal notice must be: written, signed by an appropriate authority, duly authorized on the official letterhead of the Participating Party, and must be sent via email, the Division of Emergency Managements Enterprise System (DEMES), or certified mail.

ARTICLE XII: INTERPRETATION AND APPLICATION OF AGREEMENT

The interpretation and application of this Agreement shall be governed by the following conditions:

- A. The obligations and conditions resting upon the Participating Parties under this Agreement are not independent, but dependent.
- B. Time shall be of the essence of this Agreement, and of the performance of all conditions, obligations, duties, responsibilities, and promises under it.
- C. This Agreement states all the conditions, obligations, duties, responsibilities, and promises of the Participating Parties with respect to the subject of this Agreement, and there are no conditions, obligations, duties, responsibilities, or promises other than those expressed in this Agreement.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- D. If any sentence, clause, phrase, or other portion of this Agreement is ruled unenforceable or invalid, every other sentence, clause, phrase, or other portion of the Agreement shall remain in full force and effect, it being the intent of the Division and the other Participating Parties that every portion of the Agreement shall be severable from every other portion to the fullest extent practicable. The Division reserves the right, at its sole and absolute discretion, to change, modify, add, or remove portions of any sentence, clause, phrase, or other portion of this Agreement that conflicts with state law, regulation, or policy. If the change is minor, the Division will notify the Participating Party of the change and such changes will become effective immediately; therefore, please check these terms periodically for changes. If the change is substantive, the Participating Parties may be required to execute the Agreement with the adopted changes. Any continued or subsequent use of this Agreement following the posting of minor changes to this Agreement shall signify implied acceptance of such changes.
- E. The waiver of any obligation or condition in this Agreement by a Participating Party shall not be construed as a waiver of any other obligation or condition in this Agreement.

NOTE: This iteration of the State of Florida Statewide Mutual Aid Agreement will replace all previous versions.

The Division shall provide reimbursement to Assisting Parties in accordance with the terms and conditions set forth in this Article for missions performed at the direct request of the Division. Division reimbursement eligible expenses must be in direct response to the emergency as requested by the State of Florida. All required cost estimations and claims must be executed through the DEMES Mutual Aid Portal and assisting agencies must use all required [FDEM forms](#) for documentation and cost verification. If a Requesting Party has not forwarded a request through the Division, or if an Assisting Party has rendered assistance without being requested to do so by the Division, the Division shall not be liable for the costs of any such assistance.

FDEM reserves the right to deny individual reimbursement requests if deemed to not be in direct response to the incident for which asset was requested.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date specified below:



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY A CITY

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

ATTEST:
CITY CLERK

CITY OF FELLSMERE
STATE OF FLORIDA

By: _____

By: _____
Joel Tyson

Title: _____

Title: Mayor

Date: _____

Approved as to Form:

By: _____

Attorney for the City of Fellsmere
Warren Dill, Esq.

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: January 4, 2024

Agenda Item No. 12(d)

- ☐ PUBLIC HEARING
 ☐ Ordinance on Second Reading
 ☐ Public Hearing
- ☐ ORDINANCE ON FIRST READING
- ☐ GENERAL APPROVAL OF ITEM
- ☐ Other:

- ☒ RESOLUTION
- ☐ DISCUSSION
- ☐ BID/RFP AWARD
- ☐ CONSENT AGENDA

SUBJECT: United States Department of Agriculture ("USDA") Commercial Facility Direct Loan program for the purchase of One (1) ILF Alpha Mower with Attachments

RECOMMENDED MOTION/ACTION: Approve Resolution 2024-17 authorizing the issuance of bonds in the amount of \$0.00 in connection with the USDA Commercial Facility Direct Loan Program.

Approved by City Manager Mark Mathes Date: 12/28/23

Originating Department: Grants		Attachments: Res. 2024-17
Department Review: <input checked="" type="checkbox"/> City Attorney Warren Dill <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>X</u> Please initial one.

Submittal information: Council meets on the first and third Thursdays of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore, the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

Council approved the submission of an application to the USDA on August 18, 2022 in connection with the purchase of one (1) ILF Alpha Mower and Attachments. Staff seeks approval of Resolution 2024-17 which approves the issuance of bonds in the amount of \$0.00, which Resolution is required by USDA in order for the City to file said application with the USDA Commercial Facility Direct Loan program.

2024-17
LOAN RESOLUTION
(Public Bodies)

FORM APPROVED
OMB NO. 0575-0015

A RESOLUTION OF THE City Council

OF THE CITY OF FELLSMERE

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING
A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

2023 ILF Alpha E Side Boom Mower & equipment

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the

CITY OF FELLSMERE

(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of
\$0.00

pursuant to the provisions of Florida Statutes; and

WHEREAS, the Association intends to obtain assistance from the Rural Housing Service, Rural Business - Cooperative Service, Rural Utilities Service, or their successor Agencies with the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U. S. C. 1983 (c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$ 10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contract or agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by the Government. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established and maintained, disbursements from that account may be used when necessary for payments due on the bond if sufficient funds are not otherwise available. With the prior written approval of the Government, funds may be withdrawn for:
 - (a) Paying the cost of repairing or replacing any damage to the facility caused by catastrophe.
 - (b) Repairing or replacing short-lived assets.
 - (c) Making extensions or improvements to the facility.

Any time funds are disbursed from the reserve account, additional deposits will be required until the reserve account has reached the required funded level.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain the Government's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ 176,135

under the terms offered by the Government; that the City Manager

and City Clerk of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee

The vote was: Yeas _____ Nays _____ Absent _____.

IN WITNESS WHEREOF, the City Council of the

City of Fellsmere has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this _____ day of _____, _____.

(SEAL)

Attest:

By Mark Mathes

Title City Manager

Title

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: January 4, 2024

Agenda Item No. 12(e)

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input type="checkbox"/> ORDINANCE ON FIRST READING

<input checked="" type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input type="checkbox"/> CONSENT AGENDA |
|--|---|

SUBJECT: Request for Code Enforcement Abatement for Dollar General

RECOMMENDED MOTION/ACTION: Approve abatement request at level desired by Council

Approved by City Manager *Mark Whitham* Date: 12/28/23

Originating Department:	Costs: Funding Source: Acct. #	Attachments: Payoff analysis Order of Special Master
Department Review: <input checked="" type="checkbox"/> City Attorney _____ <input type="checkbox"/> Comm. Dev. _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>X</u> Please initial one.

Submittal information: Council meets on the first and third Thursday's of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

Civil Violation Notice 2021-31 was issued on October 22, 2021. The violations related to maintenance issues related to the building and site landscaping. Along with access issue on the internal aisles and outdoor storage. The maintenance of landscaping was a repeat violation. The Special Master ruled in favor of the City on March 23, 2022 and order daily fines until the violations were corrected. At this time the violations are partially resolved. The inside aisle ways are mostly clear and accessible and the building maintenance has been addressed. Although the landscape maintenance has been partially addressed as of 12/20/23 and but is being actively addressed for completion by 12/22/23. The outdoor storage remains unaddressed but was informed that it will cease by 12/22/23 as well. Analysis sets date of compliance for 12/22/23.

At this time the amount due is \$118,004.41 comprised of the following charges:

\$350.54	Administrative Costs	10% - \$11,657.68
\$175.00	Initial Penalty	15% - \$17,700.66
\$109,950.00	Daily Fines	20% - 23,600.82
\$7,528.87	Interest.	25% - 29,501.10
		30% - 35,401.32

As a repeat violation, the City's codes direct a double fine. As such, with Council's normal abatement, staff would request that an increase be considered for the repeat violation.

City of Fellsmere

vs.

Dolgencorp, LLC d/b/a Dollar General
100 Mission Ridge
Goodlettsville, TN 37072

R. House Real Estate Investments, LLC
1370 S. Ocean Blvd., Apt. 1504
Pompano Beach, FL 33062

City of Fellsmere

Special Magistrate For Code Enforcement

Case No.: 2021-31

R. House Real Estate Investments, LLC
1836 Euclid Ave., Ste. 800
Cleveland, OH 44115

Re: 12740 CR 512, Fellsmere, FL

ORDER FINDING VIOLATIONS

THIS MATTER came for hearing before the special magistrate on March 23, 2022, on the Civil Violation Notice filed by the City against Dolgencorp, LLC and R. House Real Estate Investments, LLC (Respondents) after due notice. The City appeared through Lawrence F. Lawson, Code Enforcement Inspector/Officer and Mark Mathes, its City Manager and neither Respondents nor anyone appearing on their behalf was present at the hearing.

After consideration of the evidence presented, including the testimony and argument of the City and the documents presented by the City as Composite Exhibit "1", which was accepted into evidence, the following findings are made:

The following violations of the Fellsmere City Code exist on the captioned property:

- (a) Section 11.9.B.1, Fellsmere Land Development Regulations - Maintenance - failure to properly maintain required landscaping, including but not limited to, weeds overtaking most landscape areas, plants and other landscape materials are missing, decaying and/or dying. This is a repeat violation, and pursuant to §162.09(1), Florida Statutes, the fine for such violation could have commenced on the date the repeat violation was found to have occurred by the code inspector.
- (b) Section 11.9.C.1, Fellsmere Land Development Regulations - Replacement of required landscaping - failure to replace all dead, diseased or missing required landscape plants and material. This is a repeat violation, and pursuant to §162.09(1), Florida Statutes, the fine for such violation could have commenced on the date the repeat violation was found to have occurred by the code inspector.
- (c) Section 7.10, Fellsmere Land Development Regulations - exterior of structure is not being properly maintained, i.e., exterior of structure is extensively mildewed and many open holes exist in exterior walls of structure.
- (d) Section 3.5, Table 3.B., Permitted Uses, Fellsmere Land Development Code - outdoor display of retail items and outdoor storage of materials occurring on property, as well as donation box being located on the property, without prior approval from the City for such

activities from the City.

(e) Section 5.3.T.1.b (Outdoor Storage) and Section 3.23.B.1 (Permitted Uses), Fellsmere Land Development Code - outdoor storage does not comply with buffer or locational requirements, even if current outdoor storage can be permitted.

The City recommends fines in the amount of \$50.00 per day for each of the repeat violations described in (a) and (b); and \$25.00 per day for each of the violations described in (c), (d) and (e), which recommendations are accepted.


Based upon the foregoing, it is

ORDERED as follows:

1. Respondents shall immediately bring the captioned property into compliance for each of the violations (a) through (e), above. The fines for the violations described in (a) and (b) shall commence on March 15, 2022, which is the date following the compliance date provided by the City to Respondents. The fines for each of the respective violations in (c) through (e) shall commence on March 24, 2022, and as to each such violation, shall continue to accrue daily until each particular violation is remedied.

2. Administrative costs are awarded to the City in the amount of \$350.54. .

Done and Ordered on April 9, 2022.


James P. Beadle
Special Magistrate

Maria Suarez-Sanchez

From: Mark Mathes
Sent: Friday, December 29, 2023 7:36 AM
To: Maria Suarez-Sanchez
Subject: FW: Request for Lien Removal and Abatement of Fines: Case No. 2021-31 Address 12740 CR 512

Please add to DG abatement code item for 1/4/24 CC meeting.

Mark D. Mathes
City Manager
City of Fellsmere
22 S. Orange Street
Fellsmere, FL 32948
Office 772-646-6303
Cell 772-834-3422

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: Gus Frangos, Esq. <frangoslaw@yahoo.com>
Sent: Thursday, December 28, 2023 3:17 PM
To: Mark Mathes <citymanager@cityoffellsmere.org>
Cc: Jason Bates <jbates@dollargeneral.com>; frangoslaw@yahoo.com; Niko Frangos <niko@rascalhouse.com>
Subject: Request for Lien Removal and Abatement of Fines: Case No. 2021-31 Address 12740 CR 512

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**Re: Request for Lien Removal and Abatement of Fines:
Case No. 2021-31
Address 12740 CR 512 , Fellsmere, Florida**

**To: City of Fellsmere
c/o City Manager Mark Mathes**

Dear Mr. Mathes, I represent R. House Real Estate Investments, LLC ("Owner") the owner of the property at 12740 CR 512 (operating as a Dollar General Store). The Owner leases the property to a Dollar General Store at the captioned address. The property was cited for code violations pursuant to the attached order. First, let me apologize the the City for the violations, and at the same time express my sincere thanks for your prompt communications with us as we work through gaining compliance. As a result of the violations, we have been told that a line has been filed on the property and that the fines are in excess of \$118,000. We believe the bulk of the violations have been satisfied and that we still need to have the remaining landscaping completed and the outside storage. We commit to having all these issues completed in the next two weeks. In the event of delivery problems or supply chain problems, if we can be given till February 1, 2024, that would be appreciated.

This issue has proven to be a serious problem for the Landlord because the Owner is required to refinance the property by the end of 2023 which we will not be able to do on account of the lien and the fines, all of which should have been corrected by the Tenant and, vicariously, the Owner. Upon compliance with the Violation Order, we respectfully request: 1.) that the City's lien be removed; and 2.) that the \$118,000 in fines be fully abated. Aside from the lien itself, the amount of the fine will prevent our lender from financing this added cost. Kindly submit this as our formal request for consideration on January 4, 2024 or at such time as this request can be considered.

Once again we apologize for the situation, and thank you for your courtesies.

SINCERELY,

Gus Frangos, Esq.

8062 Ravenna Road

Hudson, Ohio 44236

p. 1-440-653-6123

fax. 1-330-319-8215

email. frangoslaw@yahoo.com

City of Fellsmere
Code Enforcement

Address of Violation 12740 CR512
Code Violation 2021-31

From SM Order
From SM Order

Civil Penalty \$175.00
Admin Cost \$350.54
Additional Other Fees \$ -
Professional fee \$0.00
\$ 525.54

From SM Order
From SM Order
From SM Order and Case Management if bills arrive late after Request for Order is done
From SM Order

always start with date interest begins (See Col. L, Row 45 or so)
Date Range per Interest Quarter and Daily Fine begin/End

Copy from Col. L & M CHANGE FOR SPLIT		DAYS (auto filled) DO NOT CHANGE		Daily Fines		always cell B-11 DO NOT CHANGE - auto filled
QUARTERS						Interest (Col. E) DO NOT CHANGE - auto filled
8/25/2015	9/30/2015	-	\$	-	\$0.00	
10/1/2015	12/29/2015	-	\$	-	\$0.00	
12/29/2015	12/31/2015	-	\$	-	\$0.00	
1/1/2016	3/31/2016	-	\$	-	\$0.00	
4/1/2016	6/30/2016	-	\$	-	\$0.00	
9/24/2016	9/30/2016	-	\$	-	\$0.00	
10/1/2016	12/31/2016	-	\$	-	\$0.00	
1/1/2017	3/31/2017	-	\$	-	\$0.00	
4/1/2017	6/30/2017	-	\$	-	\$0.00	
7/1/2017	9/30/2017	-	\$	-	\$0.00	
10/1/2017	12/31/2017	-	\$	-	\$0.00	
1/1/2018	3/31/2018	-	\$	-	\$0.00	
4/1/2018	6/30/2018	-	\$	-	\$0.00	
7/1/2018	9/30/2018	-	\$	-	\$0.00	
10/1/2018	12/31/2018	-	\$	-	\$0.00	
1/1/2019	3/31/2019	-	\$	-	\$0.00	Daily Fine formula changes when daily fine ends
4/1/2019	5/1/2019	-	\$	-	\$0.00	
5/1/2019	6/30/2019	-	\$	-	\$0.00	Interest formula changes when daily fines end
7/1/2019	9/30/2019	-	\$	-	\$0.00	
10/1/2019	12/31/2019	-	\$	-	\$0.00	
1/1/2020	3/31/2020	-	\$	-	\$0.00	
4/1/2020	6/30/2020	-	\$	-	\$0.00	
7/1/2020	9/30/2020	-	\$	-	\$0.00	
10/1/2020	12/31/2020	-	\$	-	\$0.00	
1/1/2021	3/31/2021	-	\$	-	\$0.00	
4/1/2021	6/30/2021	-	\$	-	\$0.00	
7/1/2021	9/30/2021	-	\$	-	\$0.00	
10/1/2021	12/31/2021	-	\$	-	\$0.00	
1/1/2022	3/14/2022	-	\$	-	\$0.00	
3/15/2022	3/31/2022	16	\$	2,800.00	\$6.20	
4/1/2022	6/30/2022	90	\$	15,750.00	\$309.49	
7/1/2022	9/30/2022	91	\$	15,925.00	\$378.72	
10/1/2022	12/31/2022	91	\$	15,925.00	\$603.08	
1/1/2023	3/31/2023	89	\$	15,575.00	\$895.08	
4/1/2023	6/30/2023	90	\$	15,750.00	\$1,334.49	
7/1/2023	9/30/2023	91	\$	15,925.00	\$1,882.25	
10/1/2023	12/22/2023	82	\$	12,300.00	\$2,119.56	

Always end on last date of compliance

GRAND TOTAL \$118,004.41
Daily Fine Total \$109,950.00
Interest Total \$7,528.87 DO NOT MODIFY - AUTO GENERATED

DO NOT MODIFY THIS TABLE

Administrative Fees \$350.54
Civil Penalty \$175.00
Professional Fees \$0.00
Additional Other Fees \$0.00
Daily Fines \$ 109,950.00

Update Interest Quarters - Start when Daily Fines begin and end with current date

Interest Rate	Begin Quarter	End Quarter	Days	
4.75%	7/1/2015	9/30/2015	91	Add new quarters at bottom and delete old quarters at top. Begin with date daily fine
4.75%	10/1/2015	12/31/2015	91	daily fines begin (see Column L Cell 45 or so) and end with current date
4.75%	1/1/2016	3/31/2016	90	
4.78%	4/1/2016	6/30/2016	90	Days are auto filled
4.84%	7/1/2016	9/30/2016	91	
4.91%	10/1/2016	12/31/2016	91	
4.97%	1/1/2017	3/31/2017	89	
5.05%	4/1/2017	6/30/2017	90	
5.17%	7/1/2017	9/30/2017	91	
5.35%	10/1/2017	12/31/2017	91	
5.53%	1/1/2018	3/31/2018	89	
5.72%	4/1/2018	6/30/2018	90	
5.97%	7/1/2018	9/30/2018	91	
6.09%	10/1/2018	12/31/2018	91	
6.33%	1/1/2019	3/31/2019	89	
6.57%	4/1/2019	6/30/2019	90	
6.77%	7/1/2019	9/30/2019	91	
6.89%	10/1/2019	12/31/2019	91	
6.83%	1/1/2020	3/31/2020	90	
6.66%	4/1/2020	6/30/2020	90	
6.03%	7/1/2020	9/30/2020	91	
5.37%	10/1/2020	12/31/2020	91	
4.81%	1/1/2021	3/31/2021	89	
4.31%	4/1/2021	6/30/2021	90	
4.25%	7/1/2021	9/30/2021	91	
4.25%	10/1/2021	12/31/2021	91	
4.25%	1/1/2022	3/31/2022	89	
6.58%	4/1/2023	6/30/2023	90	
4.34%	7/1/2022	9/30/2022	91	
4.75%	10/1/2022	12/31/2022	91	
5.52%	1/1/2023	3/31/2023	89	
6.58%	4/1/2023	6/30/2023	90	
7.69%	7/1/2023	9/30/2023	91	
8.54%	10/1/2023	12/14/2023	74	
			90	

Judgement Interest Rates from 7/1/2018 forward can be obtained from <https://www.myfloridacfo.com/Division/AA/LocalGovernments/Current.htm>

Daily Fine	Daily Fine Begins	Date of Physical Compliance *	Code References	Read.me
\$ 50.00	3/15/2022	12/14/2023	11.9.B.1	
\$ 50.00	3/15/2022	12/14/2023	11.9.C.1	
\$ 25.00	3/15/2022	10/1/2023	7.10	estimated date as they did not inform us of when addressed.
\$ 25.00	3/15/2022	12/14/2023	3.5	
\$ 25.00	3/15/2022	12/14/2023	5.3.T.1.b	
\$ 175.00	Total daily fine			
From SM Order	From SM Order	From Case Management	From SM Order	Enter at your discretion

* Violation is not physically compliant. Date shown as compliance is simply date of request for pay-off.
If payment is made, the case will continue and new daily fines and interest will begin to accrue until the date physical compliance is met.

City of Fellsmere City Council
Agenda Request Form

Meeting Date: January 4, 2024

Agenda Item No. 12(f)

☐ PUBLIC HEARING
☐ Ordinance on Second Reading
☐ Public Hearing

☐ RESOLUTION
☐ DISCUSSION

☐ ORDINANCE ON FIRST READING

☐ BID/RFP AWARD

☒ GENERAL APPROVAL OF ITEM

☐ CONSENT AGENDA

☐ Other:

SUBJECT: Work Authorization with Renker Eich Parks Architects to provide architectural services related to the Recreated Train Village project.

RECOMMENDED MOTION/ACTION: Approve Work Authorization #1 with Renker Eich Parks Architects.

Approved by City Manager Marc Mallick Date: 12/28/23

Originating Department: Grants	Costs: \$69,710.92 Funding Source: ARPA funds	Attachments: Work Authorization #1 Scope of Services
Department Review: <input checked="" type="checkbox"/> City Attorney Warren Dill <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>X</u> Please initial one.

Submittal information: Council meets on the first and third Thursdays of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore, the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

Paul Palmer of Renker Eich Parks will be providing professional architectural services relative to updates/compliance for Building Code changes in connection to three previously designed railroad era structures (Machine Shop, Warehouse, and Blacksmith Shop), as well as design of a fourth structure (Passenger Station); signed and sealed construction documents; budget cost estimating, permitting, and bidding services for improvements for the recreated Train Village project, under the master contract, as Renker Eich Parks was the architect on the prior phase of this project. This project is supported locally through the ARPA funding. With this contract and future contracts with the project civil engineer to update the base engineering plans, the project will be ready for bid if grant funding is awarded this summer through the Cultural Facilities grant application. If no grant is awarded, staff will seek permission to construct some of the buildings using local funds and ARPA funds.

CITY OF FELLSMERE

WORK ORDER NO. #1

**NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT DATED
SEPTEMBER 21, 2023**

Professional: Renker Eich Parks Architects

Project Title: Fellsmere Railroad Structures Reconstruction

Type of Work (check all that apply):

☐ General Consulting

☐ Code Plan Review

☐ Ordinance/Rule Development

☐ Studies and Reports

☐ Expert Witness

☐ Other

☐ Preliminary Design (30%)

☐ Design Development (60%)

☒ Construction Documents (100%)

☒ Bid Services

☐ Construction Engineering Inspection

☐ Surveying

Attachments:

☒ Scope of Work

☒ Costs

☒ Schedule

Acknowledgements

☐ Professional is in receipt of the
project-related Program Statement

☐ Professional is in receipt of the
project-related Total Project Budget

The Professional shall assist the City of Fellsmere with professional services for the Project. This Work Order authorizes the work described herein in accordance with the terms of the Non-Exclusive Professional Services Agreement. The work is outlined in the attached Scope of Work, schedule and costs and shall not exceed **\$69,710.92** without prior written consent.

Professional

(signature)

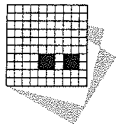
(print Name & Title)

City of Fellsmere

(signature)

(print name & Title)

Date: _____



RENKER · EICH · PARKS ARCHITECTS

December 13th, 2023

Mr. Mark Mathes, City Manager
The City of Fellsmere
22 S. Orange Street
Fellsmere, FL 32948-6714
Cc: Laura Hammer

Re: Fellsmere Railroad Structures Reconstruction - Professional Services Proposal

Dear Mark,

Thank you for considering Renker Eich Parks Architects for your project. Please let this letter serve as our proposal to provide professional Architectural and Engineering services for the Railroad Structures project.

It is our understanding that the scope of work includes updates/compliance for Building Code Changes (2023 8th Ed.) for the following three (3) previously designed to 100% CD's Railroad Era structures: **Machine Shop** (Meeting Hall Use), **Warehouse** (Exhibit Space Use), and **Blacksmith Shop** (Exhibit Space Use).

The scope also includes reconstruction of a fourth Railroad Era structure, previously designed to Concept Phase: **Passenger Station** (Restroom Use).

We will prepare Signed & Sealed Construction Documents including Drawings and Specifications. We will provide Budget Cost Estimating, Bidding & Permitting Assistance, responding to pre-bid questions, and issuing addenda if necessary. We will provide Construction Administration services for Submittal Reviews, RFI's, ASI's, PR's, Pay App Review, Close-Out Review, Video-Call Team Meetings, and make site visits for OAC Meetings as required during construction to verify compliance by the Contractor with the Construction Documents.

Basic Services Scope:

Design includes Architectural design, Structural design, Mechanical Design, Electrical Design and Plumbing design. As follows:

Machine Shop (Meeting Hall Use)	Base Bid
Warehouse (Exhibit Space Use)	Base Bid
Blacksmith Shop (Exhibit Space Use)	Add Alternate #1
Passenger Station (Restroom Use)	Add Alternate #2

Building Construction Budget Assumption, Approx.: \$850,000.00

- | | | | |
|---------------------------|-----------------------|---------------------------|--------------------|
| - Architectural Site Plan | - Foundation Plans | - Reflected Ceiling Plans | - Floor Plans |
| - Roof Plans | - Roof Framing Plans | - Floor Framing Plans | - Details |
| - Building Sections | - Exterior Elevations | - Interior Elevations | - Mechanical Plans |
| - Room Finish Schedules | - Specifications | - Electrical Plans | - Plumbing Plans |

Exclusions:

Civil Site Design, Site Grading, Site Utility Design, Site Lighting, Landscaping, Geotech, Environmental, Fire/Smoke Detection Systems, Fire Alarm, Fire Sprinkler Systems, Security Alarm, Exhibit Displays, Furnishings, Furniture, and Signage.

Basic Services Fee:

(See attached Task Hourly Worksheet, based on approved Master Contract Hourly Rates)

Architectural	\$ 27,420.00
Structural Engineering	\$ 9,500.00
Electrical Engineering	\$ 8,125.00
Mechanical/ Plumbing Engineering	<u>\$ 5,188.00</u>
Total Basic Services Fee	\$ 50,233.00

Basic Services Payment Schedule:

Code Updates/Compliance	5%	\$ 2,511.65
Schematic Design	15%	\$ 7,534.95
Design Development	20%	\$ 10,046.60
50% Construction Documents	10%	\$ 5,023.30
100% Construction Documents	15%	\$ 7,534.95
Bidding and Negotiation	5%	\$ 2,511.65
Construction Administration	25%	\$ 12,558.25
Close Out/ Final Completion	5%	\$ 2,511.65
Total	100%	\$ 50,233.00

Travel – Proposed Site Visits (Allowance):

Architect:	(8) Trips	\$ 10,966.40
Mileage: RT 310 miles x 0.68/mile = \$210.80 per trip		
Time: 8hrs x \$145/ hour = \$1,160.00 per trip		
Total Per Trip Cost = \$1,370.80		
Structural Engineer:	(2) Trips	\$ 2,767.20
Mileage: RT 270 miles x 0.68/mile = \$183.60 per trip		
Time: 8hrs x \$150/ hour = \$1,200.00 per trip		
Total Per Trip Cost = \$1,383.60		
Electrical Engineer:	(2) Trips	\$ 2,888.00
Mileage: RT 300 miles x 0.68/mile = \$204.00 per trip		
Time: 8hrs x \$155/ hour = \$1,240.00 per trip		
Total Per Trip Cost = \$1,444.00		

Mechanical & Plumbing Engineer: (2) Trips \$ 2,424.32
Mileage: RT 312 miles x 0.68/mile = \$212.16 per trip
Time: 8hrs x \$125/ hour = \$1,000.00 per trip
Total Per Trip Cost = \$1,212.16

Total Site Visits Fee Allowance \$ 19,045.92

Reimbursable Expenses: Printing & Mailing (Allowance):

Includes Four (4) Sets of Drawings and Specs:
Printing 24x36 size sheets, \$0.80/ea. x 60 sheets x (4) copies = \$192.00
Printing 8.5x11 size pages, \$0.10/ea. x 300 pages x (4) copies = \$120.00
Mailing: Estimated cost = \$120.00

Total Printing & Mailing Allowance \$ 432.00

Total Fee \$69,710.92

Task Hourly Worksheet:

Please find attached Task Hourly Worksheet, describing the hourly breakdown by Phase along with the hourly rates for each discipline, per Master Contract.

Additional Services:

Additional Professional Services per Hourly Rates.

Reimbursable Expenses:

Additional Printing and Mailing would be reimbursable at cost x 1.1.
Additional Site Trips at Owners request – time and mileage at rates listed above.

Owner Provided Items:

Civil Engineering, Surveys, Site Utilities
Soils Investigations / Reports (Geotechnical)
Environmental Site Reports

Deliverables:

Digital (.PDF) format and ACAD (.DWG) format Drawings
Digital (.PDF) format and Word (.DOC) format Specifications
Signed & Sealed Project Documents for Permitting (Digital or Hard Copy)

Project Schedule:

Code Updates/Compliance	14 Days
Schematic Design	21 Days
Design Development	21 Days
50% Construction Documents	21 Days
100% Construction Documents	28 Days
Design Total	105 Days (3.5 Months)
Permitting & Bidding	56 Days (2 Months)
Construction Administration (TBD)	126 Days (4.25 Months)
Close Out/ Final Completion	28 Days (1 Month)
Construction Total	210 Days (7 Months)
Project Total	315 Days (10.5 Months)

We appreciate this opportunity to work with the City of Fellsmere.
If you have any comments or questions, please do not hesitate to contact us.

Sincerely,
Renker Eich Parks Architects

A handwritten signature in blue ink, appearing to read 'Paul C. Palmer', with a stylized, somewhat abstract flourish extending to the right.

Paul C. Palmer, AIA LEED AP, Principal

Attachments:

- Task Hourly Worksheet – Architect
- Consultant Fee Proposals
- Maps for Site Trips Distance

Fellsmere RR Structures - Task Hourly Worksheet

Renker Eich Parks Architects
December 13th, 2023

Task Hourly Worksheet - Code Updtes, Schematics, DD's, Construction Documents, Permitting & Bidding, & CA Services

#	Task	Architectural										Total Hours	Labor Total
		Principal	Project Manager	Project Manager	Architect	Spec Writer	Cost Estimator	Graduate Intern	CADD Operator	Junior Designer	Admin Clerical		
	Phase I - Code Upgrades & SD's												
1	Research Historical Design Basis				4.0							4.0	
2	Florida Building Code Research - Updates				4.0							4.0	
3	Budget Cost Estimate						4.0					0.0	
4	Schematic Plans, Sections & Elevations							16.0		8.0		24.0	
5	Narrative Design Basis & Prelim Calcs				2.0							2.0	
6	Team Coordination & Admin		8.0									8.0	
7	Schematic Submittal			2.0	2.0			2.0			2.0	8.0	
	Phase II DD's, CD's, Permitting & Bidding												
8	Design Development				2.0							2.0	
9	50% CD's Plans, Sections, Elevs., Details				2.0			16.0		8.0		26.0	
10	50% CD's Specifications					8.0						8.0	
11	50% Submittal, Review and Revisions		2.0		2.0			2.0			2.0	8.0	
12	Budget Cost Estimate				2.0		8.0					10.0	
13	100% CD's Plans, Sections, Elevs., Details				2.0			24.0		8.0		34.0	
14	100% CD's Specifications					16.0						16.0	
15	100% Submittal, Review and Revisions				2.0			2.0			2.0	6.0	
16	100% Permit Submittal Signed & Sealed	2.0	2.0		2.0						2.0	8.0	
17	Team Coordination & Admin		8.0									8.0	
18	Permitting: Respond, Revise per Permit Review			4.0								4.0	
19	Bidding: Pre-Bid Administration			4.0								4.0	
	Phase III Construction Administration												
20	Submittals, RFI's, ASI's, and PR's			8.0				4.0			2.0	14.0	
21	Review Change Order and Substitution Requests			2.0								2.0	
22	Review Contractor's Applications for Payment			2.0								2.0	
23	Substantial Completion Review			4.0								4.0	
24	Prepare SC Punchlist and SC Certificate			2.0							2.0	4.0	
25	Final Completion Review, Close-Out Docs	2.0	4.0	2.0							2.0	10.0	
												0.0	
	Total Man-hours	4.0	24.0	30.0	26.0	24.0	12.0	66.0	0.0	24.0	14.0	224.0	TOTAL LABOR
	Contract Labor Rate per Hour	\$195.00	\$175.00	\$165.00	\$145.00	\$135.00	\$125.00	\$95.00	\$85.00	\$75.00	\$65.00		
	LABOR TOTAL	\$780.00	\$4,200.00	\$4,950.00	\$3,770.00	\$3,240.00	\$1,500.00	\$6,270.00	\$0.00	\$1,800.00	\$910.00		\$27,420.00

\$27,420.00

MILLER STRUCTURAL ENGINEERING, INC.

320 W. KENNEDY BLVD • STE 700 • TAMPA, FLORIDA 33606 • 813-259-9116

November 29, 2023

Mr. Paul Palmer
Renker Eich Parks Architects
1609 9th Street North
St. Petersburg, Florida 33704

Re: Fellsmere RR Structures Proposal (Revised)

Dear Paul:

Thank you for considering Miller Structural Engineering for the newly revised Fellsmere RR Structures project.

Based on our conversations and the scope of work, following is my understanding of the proposed project. Review and revise drawings for the new code. Design and detail a new bathroom structure for a total of 4 structures.
Machine Shop, Warehouse Building, Blacksmith Shop, and added Passenger Station (Restroom).
The following is the proposed scope of Structural Consulting Services.

1. Coordination Meetings with Architect.
2. Areas to be designed and detailed:
 - Conventional shallow foundation system
 - Wall and bracing systems
 - Roof framing system and anchorage
3. Provide ACAD format contract documents as follows:
 - General Notes and Schedules
 - Foundation / Roof Plans
 - Sections
 - Details
4. Specifications will be in General Note format on the drawings.

5. Construction Administration consists of the following:

- Shop Drawing Review
- RFI Processing
- Site visits, if required, during construction will be additional services and billed at our hourly rate of \$150/hr x 8hrs = \$1,200 + mileage per visit.

Additional services will be billed at an hourly rate of \$150.00/hr.

Based on the above scope of services, the Structural Engineering fee is as follows:

Total fee \$9,500

Phase I = 20%

Phase II = 65%

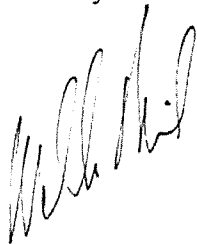
Phase III = 15% excludes site visits which will be billed hourly

Site visits each = \$1,200 + mileage

Note: If this proposal is acceptable and no written contracts are executed, this letter will become the Architect/Consultant Agreement for Professional Services based on the Terms and Conditions of the AIA Document C401 "Standard Form of Agreement Between Architect and Consultant".

I look forward to the possibility of working together on this project. If you have any questions, please call.

Sincerely:



Walter W. Miller, P.E.

Accepted:

Renker Eich Parks Architects

PROPOSAL

Date: 12/5/2023
To: Paul Palmer – Renker Eich Parks Architects
From: Edward Wolanin, PE
RE: Fellsmere Railroad Structures
MPS Job No: Proposal

Dear Paul,

Thank you for sending the information on this project to us for our proposal. We are looking forward to working with you to make this a successful project. Services being provided are for the scope as indicated in email correspondence to our office on 11/28/2023 and associated preliminary plans provided to us.

Scope:

The proposed scope of work includes the electrical engineering services needed to design a new Passenger Station restroom use building and to bring 3 previously designed building plans up to the current building code in Fellsmere, FL.

Construction Document Services:

- Design of code-compliant lighting controls – this will be a combination of room-based occupancy sensors, lighting control panels, and daylight harvesting sensors where required
- Lighting fixture selections and layout
- Emergency egress lighting fixture selection and layout
- Electrical power distribution from new electrical service
- Coordination with power company for new electrical service
- Receptacle power
- Electrical specifications for the design provided
- Attend necessary design meetings with Architect and design team billed per visit as requested

Construction Administration Services:

- Assist during bidding, bid evaluation, and subcontractor selection
- Submittal and shop drawing review
- RFI response and communications
- Site visits billed separately and as requested

Coordination:

- Your office to provide Architectural CAD files for our use
- Owner's Representative for the following trades shall provide information to our office for coordination:


Excluded Services in This Proposal:


- Value Engineering after delivery of final Construction Documents. We will assist in developing add/deduct alternates prior to bid
- Changes to the scope of work resulting from unforeseen field conditions or as requested by the owner
- Changes to the design based on contractor product selections not in basis of design. Including, but not limited to, selective breaker coordination, HVAC equipment selections, lighting fixture selections, fire alarm, etc.
- Audio/Video systems design including security camera and wireless access point locations and selections
- Design of any systems not listed above
- Green Building Design or LEED Certification
- Design of alternative energy source systems (PV, Wind, etc..)



240 Pine Ave. North
Oldsmar, FL 34677

MPS ENGINEERING

 www.mpseng.com

 813.855.2721

AN M.P. SPYCHALA COMPANY

- Reproduction of documents beyond those explicitly included herein
- Detailed opinions of probable construction costs
- Additional site visits as requested by the owner or required by the contractor's failure to comply with the contract documents, codes, or to meet the construction schedule
- Production of as-built drawings

Based on these assumptions and on the preliminary information provided by your office, please consider the following fee proposal.

Code change analysis	\$ 1,500.00
Preparation of Permit Documents	\$ 5,000.00
In-house Construction Administration Services, as-builts etc.	\$ 1,625.00
Total Fee for Electrical Engineering Services	\$ 8,125.00

Construction Site Visit Including Travel Expenses billed separately per visit \$ 1,425.00

Additional Expenses:

Unless already included in above base proposal, all direct expenses for printing, shipping, courier service, travel outside of the Tampa Bay area, preparation of electronic files for contractor or vendor use and other expenses incurred on behalf of the owner shall be reimbursable at cost unless otherwise noted. These items will be identified and listed separately on our invoices.

Additional Services:

If additional services are requested, we will perform the services requested at our standard hourly rates. Our rates for this project are stated below. If definite scope of work is determined for the additional service, we can provide a fee quotation for the work. We will need written authorization for additional services before we proceed.

Principal	\$200.00/hour	Designer	\$125.00/hour
Professional Engineer	\$175.00/hour	CAD Technician	\$85.00/hour
Project Manager	\$150.00/hour	Clerical/Admin	\$65.00/hour

Terms and Conditions:

MPS Engineering, Inc. shall perform the services outlined in this proposal/agreement for the stated fee arrangement.

Access to Site:

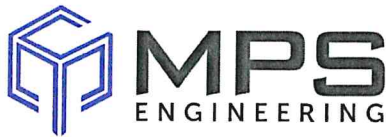
Unless otherwise stated, MPS Engineering, Inc. will have access to the site for activities necessary for the performance of the services. MPS Engineering, Inc. will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

Dispute Resolution:

Any claims or disputes made during design, construction, or post-construction between the Client and MPS Engineering, Inc. shall be submitted to non-binding mediation. Client and MPS Engineering, Inc. agree to include a similar mediation agreement with all contractors, sub-contractors, sub-consultants, suppliers, and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.


Billings / Payments:


Invoices for MPS Engineering, Inc.'s services shall be submitted, at MPS Engineering, Inc.'s option, either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. If the invoice is not paid within 30 days, MPS Engineering, Inc. may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainers shall be credited on the final invoice.



240 Pine Ave. North
Oldsmar, FL 34677

MPS ENGINEERING

 www.mpseng.com

 813.855.2721

AN M.P. SPYCHALA COMPANY

Late Payments:

Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

Indemnification:

The Client shall, to the fullest extent permitted by law, indemnify and hold harmless MPS Engineering, Inc., his or her officers, directors, employees, agents and sub-consultants from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of MPS Engineering, Inc.

Certifications:

Guarantees and Warranties: MPS Engineering, Inc. shall not be required to execute any document that would result in it certifying, guaranteeing, or warranting the existence of conditions whose existence MPS Engineering, Inc. cannot ascertain.

Limitation of Liability:

In recognition of the relative risks, rewards, and benefits of the project to both the Client and MPS Engineering, Inc., the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, MPS Engineering, Inc., total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed the value of this contract. Such causes include, but are not limited to, MPS Engineering, Inc., negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

Termination of Services:

This agreement may be terminated by the Client or MPS Engineering, Inc. should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay MPS Engineering, Inc., for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

Ownership of Documents:

All documents produced by MPS Engineering, Inc. under this agreement, shall remain the property of MPS Engineering, Inc., and may not be used by the Client for any other endeavor without the written consent of MPS Engineering, Inc.

Authorization to proceed, whether or not this proposal is signed and returned, constitutes acceptance of the terms listed herein.

If you have any questions about this proposal or about any of our assumptions, please call me at your convenience to discuss them. Thank you once again for your consideration.

Sincerely,



Edward Wolanin, PE
Principal / Electrical Engineer
Accepted By:

(Signature)

(Date)

(Printed Name/Title)



Delivering Creative Engineering Solutions

December 5, 2023

Mr. Paul C. Palmer, AIA
Renker Eich Parks Architects
1609 Dr. Martin Luther King Jr St N
St. Petersburg, FL 33704

RE: Fellsmere Railroad Structures
M | P Engineering Design Services

Dear Mr. Palmer:

In response to your request, the following is my proposal to provide mechanical and plumbing engineering design services on the referenced project. This project consists of reconstruction of a historic machine shop and water tower. The general concepts of the project are developed from plans and specifications sent to us on 11/28/2023.

DESIGN SERVICES

MECHANICAL

1. Update Meeting Hall plans and specifications to the FBC Mechanical Code Eighth Edition 2023.
2. Update Energy Code calculations to the FBC Energy Conservation Eighth Edition 2023.
3. Complete design of ventilation system for Passenger Depot. HVAC system design includes plans, schedules, and details.

PLUMBING

1. Update Meeting Hall plans and specifications to the FBC Plumbing Code Eighth Edition 2023.
2. Plumbing design for Passenger Depot restrooms, assuming that others will bring to utilities within 5 feet of the building

GENERAL

1. Shop drawing review and telephone coordination during construction is included.
2. One set of reasonable red-line comments is included. All revisions to comply with code comments are included in the base fee.

3. Site inspections will be invoiced per our hourly rates with travel millage reimbursement.

PLANS AND SPECIFICATIONS

1. AutoCAD compatible backgrounds will be supplied for our use by others.
2. Bound specifications will be provided.

SCHEDULES

1. Start Date - Upon receipt of required information and signed proposal or contract.
2. Finish Date - In accordance with reasonable schedule.

FEES

My proposed fee for services is five thousand one hundred eighty-eight dollars (\$5,188) as broken down below.

Meeting Hall code reference updates and new structure: \$3,250

Bid Negotiations: \$388

Construction Administration: \$1,550

Site inspections will be billed at an hourly rate of \$125 for a Project Manager plus a milage rate of \$0.68 per mile.

ADDITIONAL SERVICES/REIMBURSABLES

1. Except as noted above, contract administration, inspections, etc. are not included in the fee. These services as well as any other additional services outside the scope of the basic fee proposal will be billed at the following hourly rates:

Principal	\$225
Project Manager	\$125
Project Engineer	\$110
Designer	\$95
Clerical	\$65

2. The cost of reproduction, express delivery, travel, and other subcontracted services will be billed at invoice cost (or market rates in the case of in-house printing) plus a 10% fee. Plots/prints required by extra services and supplied by Griner Engineering will be billed at a rate of \$.60 per square foot.

PAYMENT SCHEDULE

1. Progress billings will be issued on a monthly basis as work proceeds.
2. Terms are net thirty (30) days. In the event legal action is necessary to enforce the payment terms of this Agreement, GEI shall be entitled to collect from Renker Eich Parks Architects, Inc. any judgment or settlement sums due plus reasonable attorney's fees, court costs, and other expenses incurred by GEI in connection therewith and, in addition, the reasonable value of GEI's time and expenses spent in connection with such collection action, computed according to the prevailing fee schedule and expense policies.

Please call me if you have any questions.

Sincerely,

Jeffery W. Yurchis

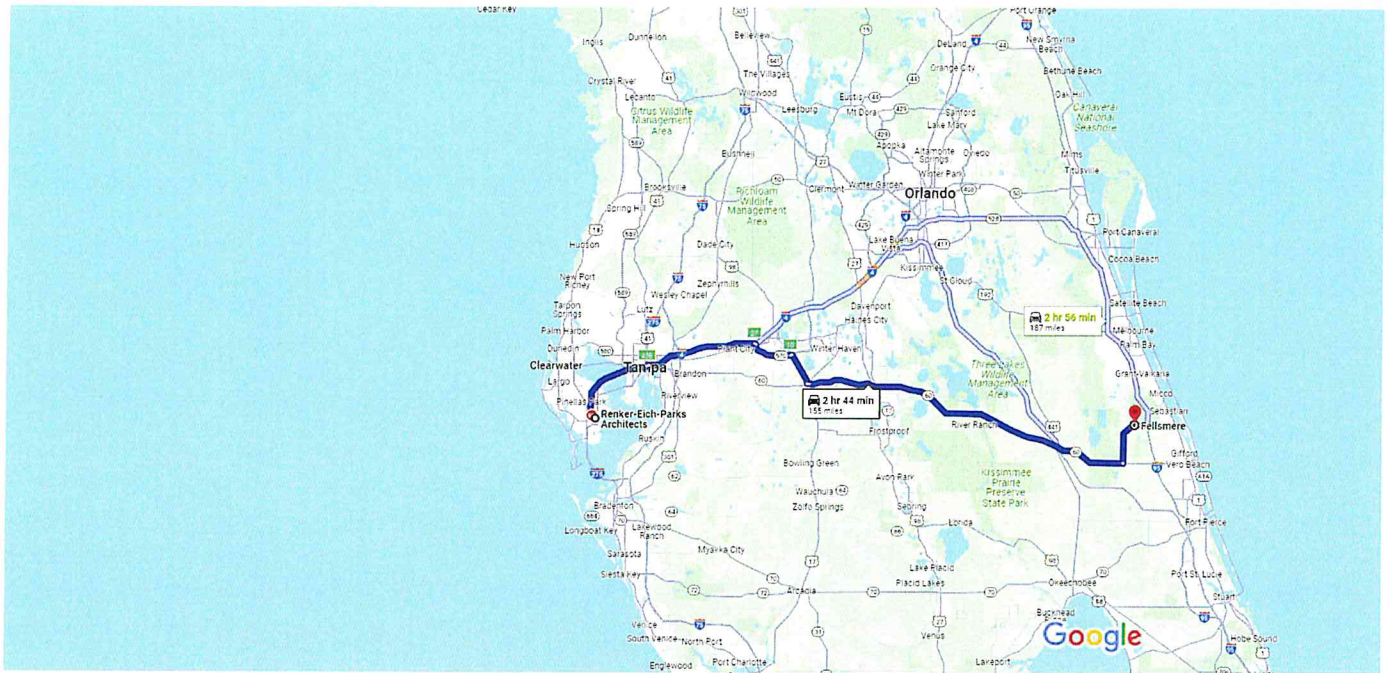
Jeffery W. Yurchis
Project Manager

ACCEPTED BY: _____
Renker Eich Parks Architects, Inc.



Renker-Eich-Parks Architects, 1609 Dr M.L.K. Jr St N, St. Petersburg, FL 33704 to Fellsmere, Florida Drive 155 miles, 2 hr 44 min

310 Roundtrip Distance, 5 hrs 28 min



Map data ©2023 INEGI, Google 10 mi

via E State Rd 60 E **2 hr 44 min**
Fastest route now due to traffic conditions
155 miles
 This route has tolls.

via I-4 E and Florida's Tpke **2 hr 50 min**
181 miles

via I-4 E and I-95 S **2 hr 56 min**
187 miles

Explore Fellsmere



Restaurants



Hotels



Gas stations



Parking Lots

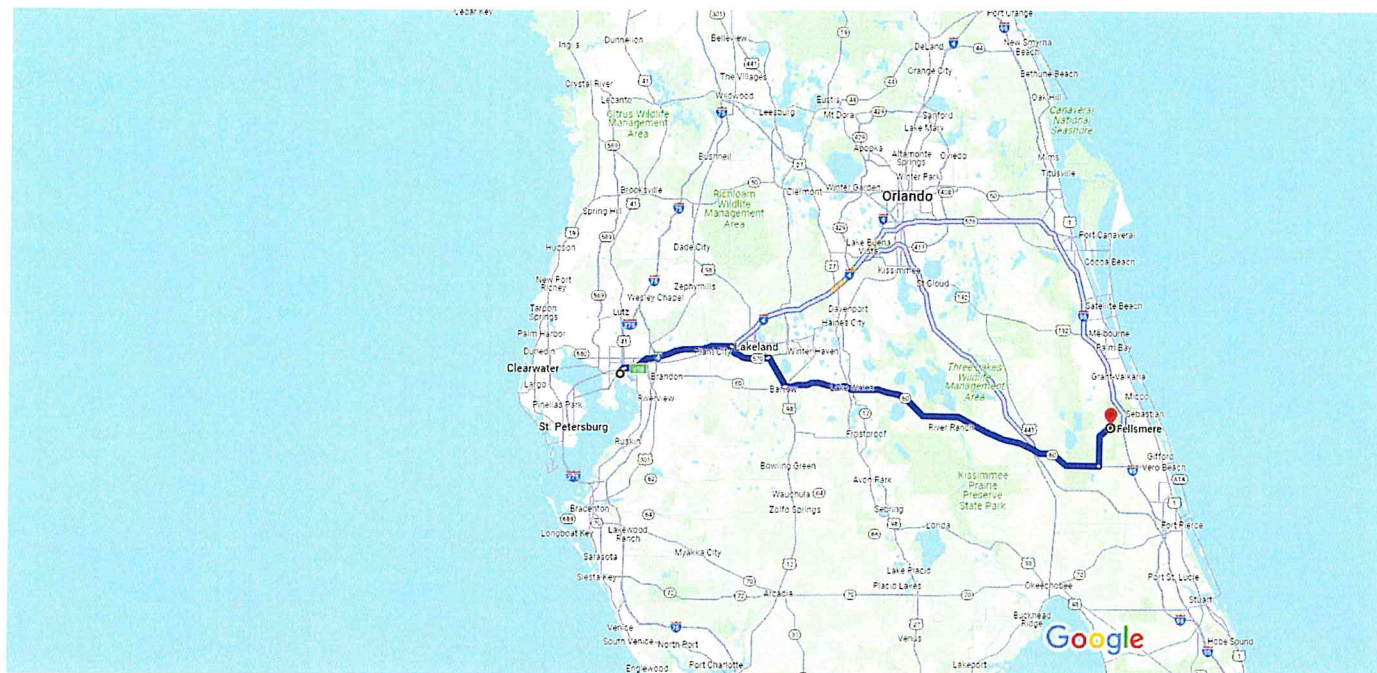


More



Miller Structural Engineering, 320 W Kennedy Blvd # 700, Tampa, FL 33606 to Fellsmere, Florida

270 Roundtrip Miles, 4 hrs 48 min



Map data ©2023 INEGI, Google 10 mi

 **via E State Rd 60 E** **2 hr 24 min**

Fastest route now due to traffic conditions 135 miles

 This route has tolls.

 **via I-4 E and Florida's Tpke** **2 hr 32 min**

161 miles

 **via I-4 E and I-95 S** **2 hr 37 min**

167 miles

Explore Fellsmere



Restaurants



Hotels



Gas stations



Parking Lots



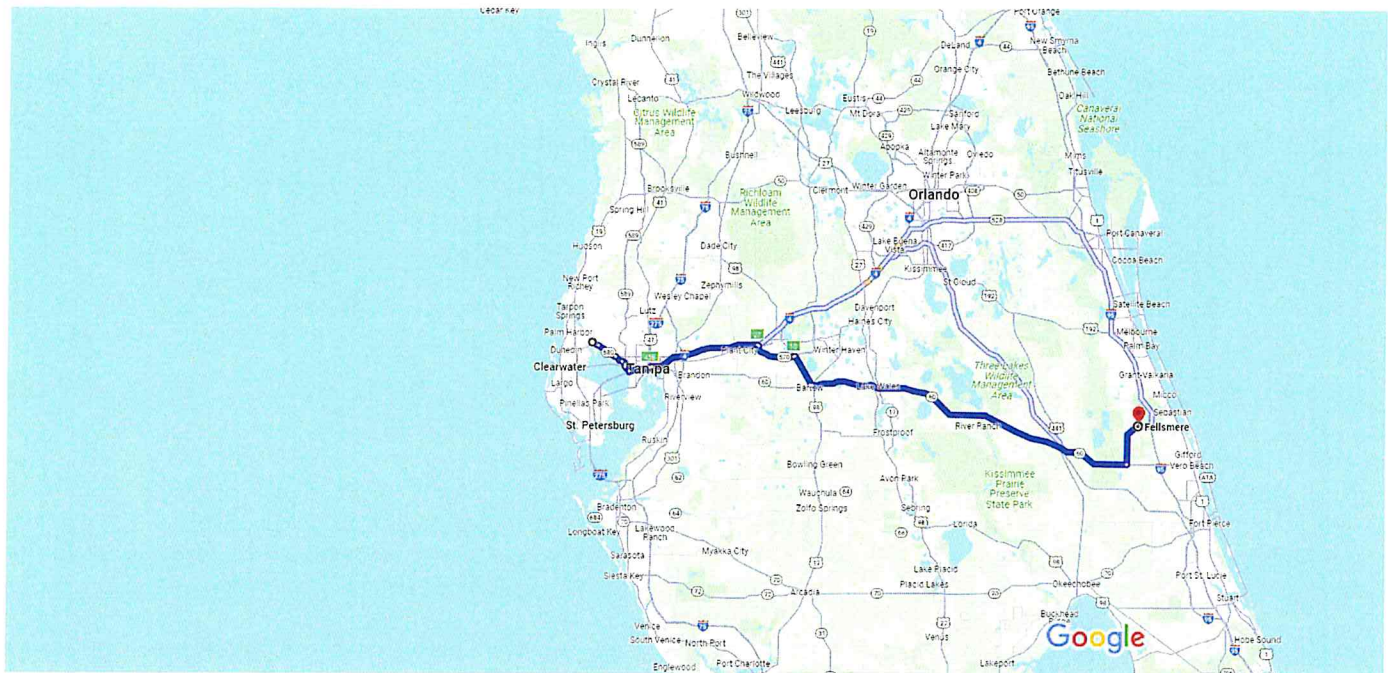
More



MPS Engineering, Inc., 240 Pine Ave N, Oldsmar, FL 34677 to
Fellsmere, Florida

Drive 150 miles, 2 hr 45 min

300 Roundtrip Miles, 5 hrs 30 min



Map data ©2023 INEGI, Google 10 mi

via E State Rd 60 E **2 hr 45 min**
Fastest route now due to traffic conditions
150 miles
 This route has tolls.

via I-4 E and Florida's Tpke **2 hr 53 min**
177 miles

via I-4 E and I-95 S **2 hr 59 min**
183 miles

Explore Fellsmere



Restaurants



Hotels



Gas stations



Parking Lots

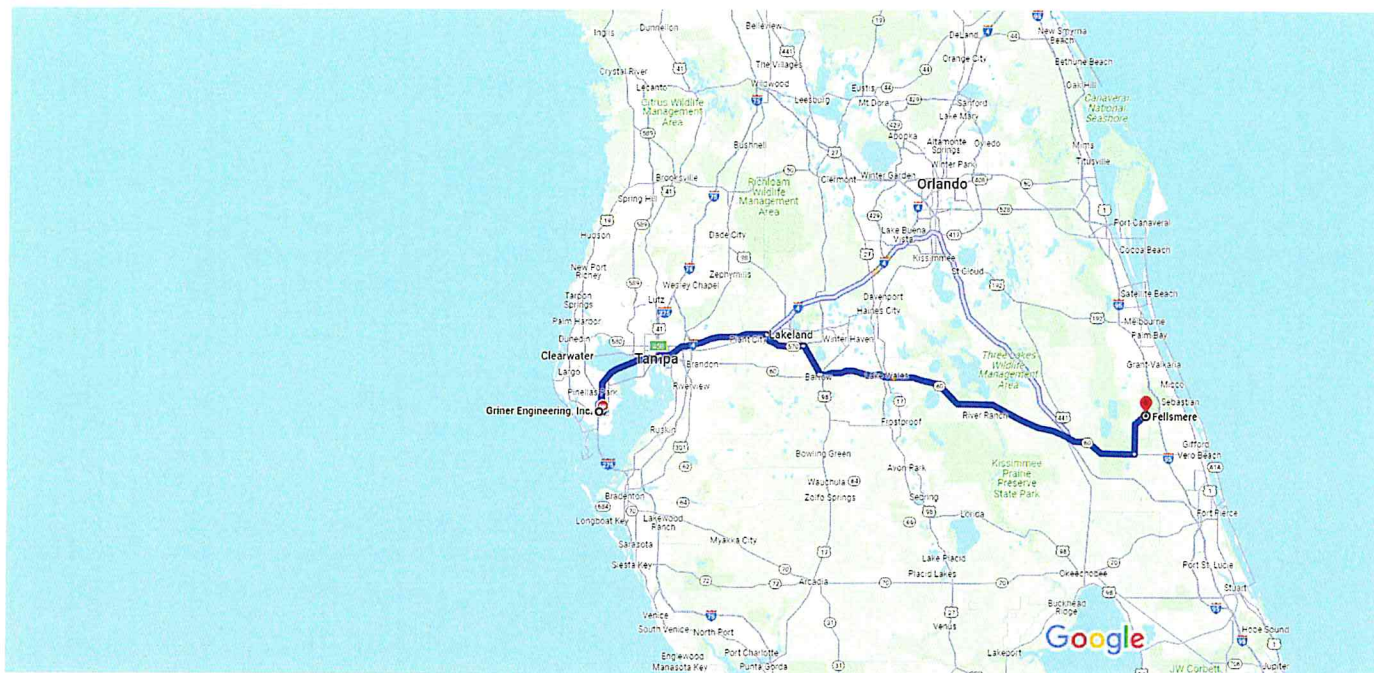


More



Griner Engineering, Inc., 3125 5th Ave N, St. Petersburg, FL 33713 to Fellsmere, Florida Drive 156 miles, 2 hr 49 min


312 Roundtrip Miles, 5 hrs 38 min



Map data ©2023 INEGI, Google 10 mi

 **via E State Rd 60 E** **2 hr 49 min**

Fastest route now due to traffic conditions 156 miles

 This route has tolls.

 **via I-4 E and E State Rd 60 E** **2 hr 51 min**

156 miles

 **via I-4 E and Florida's Tpke** **2 hr 57 min**

182 miles

Explore Fellsmere



Restaurants



Hotels



Gas stations



Parking Lots



More

City of Fellsmere City Council
Agenda Request Form

Meeting Date: January 4, 2024

Agenda Item No. 12(g)

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input type="checkbox"/> ORDINANCE ON FIRST READING

<input checked="" type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input type="checkbox"/> CONSENT AGENDA |
|--|---|

SUBJECT: Best Buy Technology Update for City Hall.

RECOMMENDED MOTION/ACTION: Approve Best Buy Technology Update Proposal through Omnia Partners Public Sector cooperative purchasing.

Approved by City Manager Mark Malcher **Date:** 12/28/23

Originating Department:	Costs: \$64,825.00 Funding Source: ARPA Acct. #	Attachments: 1.) Best Buy Engineered Proposal through Omnia Partners. 2.) Best Buy Quote details through Omnia Partners.
Department Review: <input type="checkbox"/> City Attorney _____ <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case ____A.S.____: Please initial one.

Summary Explanation/Background The City of Fellsmere needs technology updates for City Hall. These updates will include audio and video updates to the Auditorium, Conference room, Community meeting room and Council Chambers. The update to the Auditorium will include a new projector screen, projector, and audio equipment. The Conference and Community Room will have a new 65" T.V. with rolling cart and rally bar for conferencing. The Council Chambers will receive a new wall mount 65" T.V. with audio upgrades. With the technology

enhancements, Council Chambers will be connected to all other rooms to allow for overflow capacity of Council Chambers. Purchasing is through OMNIA Partners which is a National contract for Cities, Counties, schools, and religious organizations.

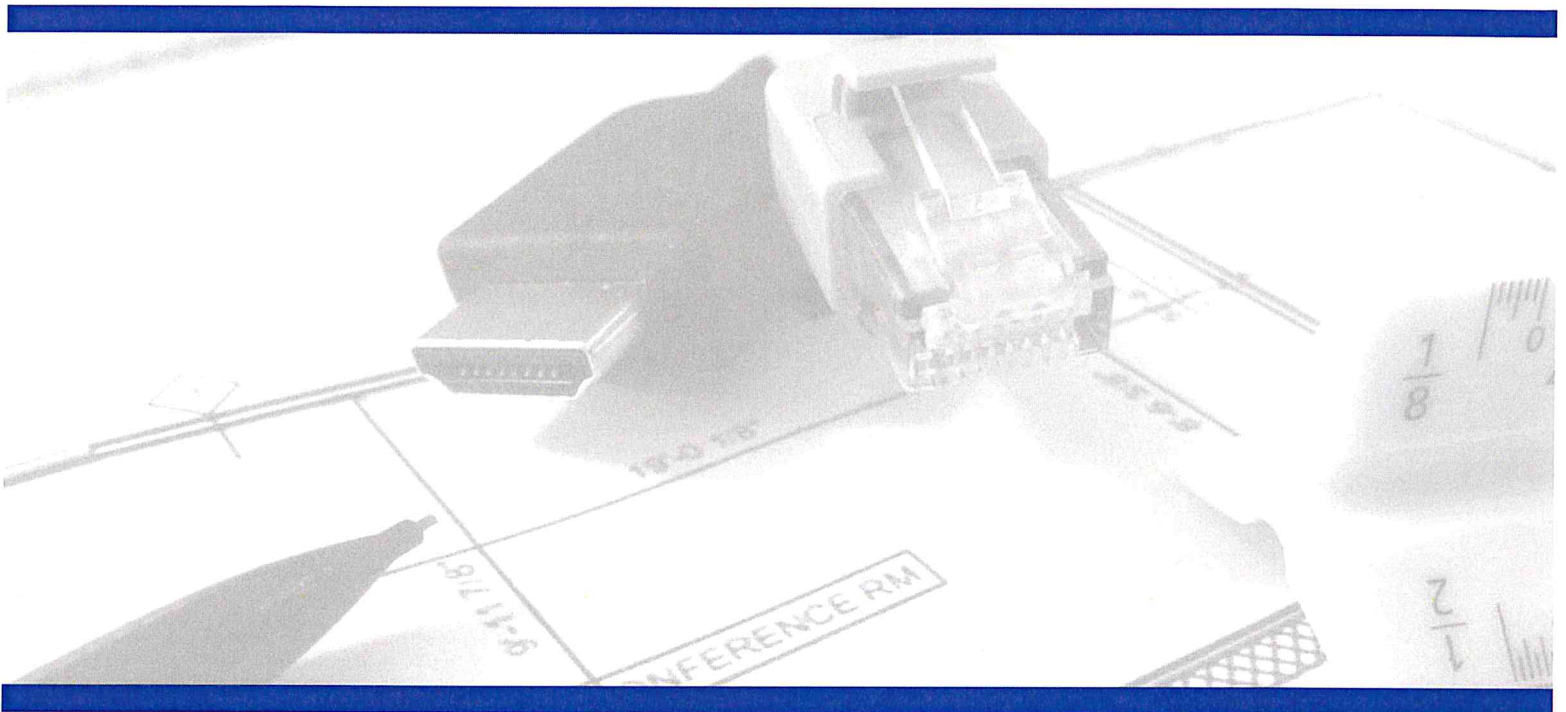


Engineered Proposal

Prepared For:

City of Fellsmere, FL

Technology Update



For Any Questions Please Contact:

Stephen Manero

Stephen.Manero@bestbuy.com

612-292-0849

Project Number: ENG3763



Design Engineer: Joseph Boos

Modified:

November 9, 2023

Expiration:

November 23, 2023

Revision:

5



Solution Overview

The client is looking to improve the audio and visual experience in multiple spaces within their facility. This solution assumes a limited invasive installation effort due to existing limitations with access and ornamental finishes throughout.

Statement of Functionality

Auditorium

Video	One (1) Laser WUXGA projector mounted to the ceiling. One (1) 226" 16:10 motorized screen will be flown from the ceiling of the stage and controlled by a manufacturer-provided wall switch controller. The solution will have access to Owner-furnished content provided by end-user device(s).
Audio	70v distributed speaker solution for primary audio consists of four (4) 12-inch surface-mount speakers with two (2) speakers located on either side of the stage. The solution will have access to the owner-furnished video content and up to four (4) wireless microphones consisting of a gooseneck on a podium, handheld, and lavalier/worn devices. The maximum sound level will be reinforced speech (presentations, conferencing). The client is to provide a hearing-assisted device to be integrated with the solution.
Collaboration	The end-user will be able to connect their provided devices using the following: direct-to-device cable via HDMI and 3.5mm audio The conferencing solution will include the following features: house microphone system to be available to remote log-in participants via a dedicated PC for the conference platform of choice. An optional PTZ camera on a tripod can be deployed as needed.
Network	The network will consist of an owner-furnished network switch for connection of conference and presentation peripherals.

Meeting Room 1 & 2 (Same solution in two spaces)

Video	One (1) 65" LED UHDTV flat panel display installed to a rolling cart. The solution will have access to conference system content with the peripherals accessible from the rolling cart.
Collaboration	The end-user will be able to connect their provided devices using a direct-to-device cable (USB) The conferencing solution will include the following features AEC, Active speaker tracking, and integrated speakerphone.

Chamber Overflow Room

Video	One (1) 65" LED UHDTV flat panel display mounted to the wall. The solution will have access to mirrored content from the Chamber interior.
Audio	70v speaker solution for primary audio consisting of two (2) on-wall speakers. The solution will have access to the audio channel that follows the video signal. The maximum sound level will be reinforced speech (presentations, conferencing).
Control / Interface	The system will be operable using the following: wall controller The wall controller will operate the volume only.

Client Responsibilities

- Client is to furnish a network switch in the Auditorium with access to the internet.
- Client is responsible for ensuring current login credentials are available for all devices and services including, but not limited to: network equipment, cable and internet service provider accounts, cloud services, streaming services, smart home equipment and accounts, etc.
- Cable / Satellite service and components must be installed, activated, and functional prior to Geek Squad service date.
- Electrical outlet(s) installed at all equipment locations prior to Geek Squad service date.

Risks

- This design is based on the information provided to Best Buy and Geek Squad at the time of assessing client requests and needs. Any unidentified location variables, changes to required functionality, or unknown constraints may impact the overall performance and/or price of the proposed solution.
- Equipment and applications in this system require reliable network coverage and speeds. Failure to provide sufficient wired or wireless connectivity to these devices will result in limited functionality or failure to operate as designed or intended.
- Best Buy or Geek Squad does not own and is not liable for the interoperability between devices. Supported compatibilities are owned and managed by the product manufacturers. Best Buy or Geek Squad cannot assume responsibility to modifications or suspensions to third party integrations.
- Best Buy and Geek Squad provide a 90-day workmanship warranty on applicable services excluding virus and malware removal. This warranty will cover services rendered that have not been altered by a client or contractor after the original service date. Products that are uninstalled or changed will not be covered by the workmanship warranty and will require a new installation be scheduled for requested services at an additional fee.

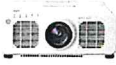

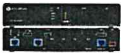

Assumptions

- Best Buy / Geek Squad will program the control system as outlined above. Requests for additional customization, options, and/or components may require additional labor charges and/or appointments.
- Equipment will be used in a manner and an environment in which the manufacturer has intended.
- Mounting height of any device is not to exceed ten (10) feet above the finished floor space unless specifically stated and approved.
- CAT5e cabling is assumed for existing networking infrastructure unless specifically stated.
- RG6 coaxial cabling is assumed for existing cable, satellite, or antenna infrastructure unless specifically stated.
- Walls, floors, and ceilings are assumed to be structurally sound. Please consult with a structural engineer or contractor for reinforcement recommendations.
- Best Buy and/or Geek Squad will not install any products or perform services deemed inadequate, unsafe, and/or structurally compromised.
- Cable, satellite, and/or internet service and components will be installed, activated, and functional prior to Geek Squad service date.
- Active 120VAC power outlets must be installed prior to Geek Squad service date and meet national and local requirements. Power cords cannot be routed within a wall or ceiling cavity.
- All required shelving necessary to install and house equipment must be in place prior to Geek Squad service date unless otherwise stated in the Statement of Functionality. Failure to comply with this standard will result in a

reschedule of the applicable services.

- Owner furnished or service provider network equipment that is existing and/or installed meets or exceeds coverage and speed recommendations for requested functionality.
- All work that is not specifically called out in the Statement of Functionality but is requested by the client or their representation on-site, will be treated as a Change Order. All applicable expenses, including but not limited to: equipment, hardware, software, parts, and labor will be itemized in the Change Order and billed to the client.
- All primary users will be on-site during final installation and available for up to 30 minutes of educational demonstration of all systems and components included in the Scope of Work and Statement of Functionality.

Auditorium

Video		QTY
	PANASONIC PT-RZ790WU7 Projector / WUXGA / 7200 Lumens / Laser / White	1
	+ BEST BUY CUSTOM PARTS (BBYB) - AV - \$100 Custom parts allowance for commercial (BBYB) clients - Fixed Pricing	2
	+ C2G 53410 Power Cable / 5-15P to 5-15R / 25ft / Black	1
	+ PANASONIC ET-DLE060 Short-throw zoom lens - 9.16 mm - 12.1 mm - f/1.85-2.34	1
	+ PEERLESS-AV ACC800 Accessory / Ceiling Pole Coupler (M-F) / Cable Pass-Thru / Black	2
	+ PEERLESS-AV AEC0608 Accessory / Ceiling Mount / Extension Pole / 6' to 8' / Black	1
	+ PEERLESS-AV DCS200 Accessory / Ceiling Adapter / Structural / Anti-Vibration / Black	1
	+ PEERLESS-AV PRG-UNV Ceiling Mount / Projector Adapter / Universal / Black	1
	DA-LITE 24848E Projection Screen / Motorized / Surface Mount / 226" / 16:10 / 1.3 Gain	1
	+ BEST BUY CUSTOM PARTS (BBYB) - AV - \$100 Custom parts allowance for commercial (BBYB) clients - Fixed Pricing	2
	ATLONA AT-UHD-SW-5000ED Video Switch / 5 Input / 2 Output / UHD / Mirrored Output / Audio De-Embedder	1
	+ BEST BUY ESSENTIALS BE-SF1162 HDMI Cable / 6ft / Black	2
	+ APPLE MUF82AM/A Adapter / USB-C to HDMI (F), UBS-C, USB / 6in / White	1
	+ ATLONA AT-HDVS-200-TX-WP Extender Wallplate TX / HDMI / HDBaseT / 330ft / 4K UHD / PoE / Video Switching	1
	+ ATLONA AT-UHD-EX-100CE-RX HDBaseT Receiver / HDMI / Ethernet / Power / Control / Up to 100 Meters (CAT6a or 7) / 4K UHD / HDCP 2.2 Compliant	1
	+ C2G 40415 Unbalanced Audio Cable / 3.5mm / 25ft / Black	1
	+ INSIGNIA NS-HG25507 HDMI Cable / 25ft / In-Wall Rated / Black	1
	OFFICE LAPTOP COMPUTER [OFE] - Owner Furnished Equipment	1
Audio		QTY

**CLEARONE WS840 M500****1***Wireless Microphone Receiver / 4-Channel / 486-512 MHz / Audio Compression***+ CLEARONE WS800 GOOSENECK M500****1***Microphone / Gooseneck / 486-512 MHz / Black / Rechargeable***+ CLEARONE WS800 HANDHELD M500****2***Microphone / Handheld / 486-512 MHz / Black / Rechargeable***+ CLEARONE WS800 BELTPACK TX M500****1***Accessory / Wireless Beltpack Transmitter / 486-512 MHz***+ CLEARONE WS800 LAVALIER (OMNI)****1***Microphone / Lavalier / Omni***JBL CSM 28****1***Mixer / Rack Mount / 8-Channel / Analog***ATLASIED SM12CXT-B****4***Speaker / Surface Mount / 12" / 60W Tap / Single / Black***+ ATLASIED SM12CBKT-B****4***Accessory / Atlas Sound SM12 - Mounting Kit***JBL CSA 1300Z****1***Amplifier / 70V or 8-ohm / 300 Watts Per-Channel / 1-Channel***OFE HEARING LOOP TXR****1***[OFE] - Owner Furnished Equipment - Hearing Assist System (Hearing Loop)*

Collaboration**QTY**

**DELL DELL OPTIPLEX 7010 (C36TD)****1***Desktop / Micro Form Factor / i5 4.6 GHz / 16 GB RAM / 256GB SSD / UHD Graphics 770 / Wi-Fi / Win 11 Pro***+ BEST BUY ESSENTIALS BE-SF1162****1***HDMI Cable / 6ft / Black***+ BEST BUY ESSENTIALS BE-PEC6ST10****1***Network Cable / Cat6 / 10ft / Snagless / Blue***+ LOGITECH 920007182****1***Accessory / Keyboard and Touchpad / Wireless / Illuminated / Black***LOGITECH RALLY CAMERA****1***Camera / PTZ / 4K / USB 3.0***+ LOGITECH STRONG USB 25M****1***USB 3.2 Cable / A (M) to C (M) / 82ft / Plenum Rated / Black***+ SUNPAK 620-624DLXB****1***Camera Tripod / 62" / Semi-professional / Black***VADDIO AV BRIDGE MINI****1***Conference Bridge / AV-to-USB / HDMI, Mic/Line in / Wired*

+ C2G 54174	1
USB 3.0 Cable / A (M) to B (M) / 6.6ft / Black	
+ VADDIO 998-6000-006	1
Rack Mount Kit / 1U / Vaddio	

Equipment Rack	QTY
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	TRIPP LITE SMART500RT1U	1
	UPS / 6-Outlet (5 Battery/1 Surge) / 500VA / 15A / Rack-Mount (1U)	
	TRIPP LITE SRShelf2P1U	2
	Rack Shelf / 1U	

Network	QTY
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	OFE NETWORK SWITCH	1
	[OFE] - Owner Furnished Equipment	

Meeting Room 1

Video	QTY
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	SAMSUNG BE65C-H	1
	Commercial Display / 65" / UHD / 250 NIT / 16 hrs	
	OFE LAPTOP COMPUTER	1
	[OFE] - Owner Furnished Equipment	




Mounts	QTY
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	PEERLESS-AV PR560M	1
	AV Cart / Flat panel cart for 55" to 86" Displays / Black	
	+ PEERLESS-AV ACC320	1
	Accessory / Power Strip / Cart Black	



Collaboration	QTY
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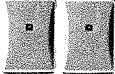

	LOGITECH RALLY BAR HUDDLE	1
	Conferencing System - All-in-One / Camera, Mic, Speaker / Graphite	
	+ LOGITECH RALLY BAR TV MOUNT	1
	Accessory / TV Mount for Logitech Rally Bar or Rally Bar Mini	
	+ C2G 42526	1
	HDMI Cable / 32.8ft / In-Wall Rated / Gray	
	+ LOGITECH STRONG USB 10M	1
	USB 3.2 Cable / A (M) to C (M) / 33ft / Plenum Rated / Black	

Meeting Room 2



Video	QTY
 SAMSUNG BE65C-H Commercial Display / 65" / UHD / 250 NIT / 16 hrs	1
Mounts	QTY
 PEERLESS-AV PR560M AV Cart / Flat panel cart for 55" to 86" Displays / Black	1
+ PEERLESS-AV ACC320 Accessory / Power Strip / Cart Black	1
Collaboration	QTY
 LOGITECH RALLY BAR HUDDLE Conferencing System - All-in-One / Camera, Mic, Speaker / Graphite	1
+ LOGITECH RALLY BAR TV MOUNT Accessory / TV Mount for Logitech Rally Bar or Rally Bar Mini	1
+ C2G 42526 HDMI Cable / 32.8ft / In-Wall Rated / Gray	1
+ LOGITECH STRONG USB 10M USB 3.2 Cable / A (M) to C (M) / 33ft / Plenum Rated / Black	1

Chamber Room

Video	QTY
 SAMSUNG BE65C-H Commercial Display / 65" / UHD / 250 NIT / 16 hrs	1
+ PEERLESS-AV ST660 Display Mount / Wall / Tilt / Security Hardware / Black	1
+ TRIPP LITE SWIVEL6 Surge Protector / 6-Outlet / 15A / Wall Tap	1
+ PEERLESS-AV ACC415 Accessory / Metal Framing Anchors / 4-Pack	1
 ATLONA AT-HDR-CAT-4ED Distribution Amplifier / 1 HDMI in / 1 HDMI and 4 HDBaseT Out / IR and RS-232 / Audio De-Embedding	1
+ ATLONA AT-HDR-EX-100CEA-RX Extender RX / HDMI / HDBaseT / 330ft / 4K HDR / IR, RS-232 / Ethernet and Toslink	2
+ BEST BUY ESSENTIALS BE-SF1182 HDMI Cable / 12ft / Black	1
+ BEST BUY ESSENTIALS BE-SF1162 HDMI Cable / 6ft / Black	2

Audio		QTY
	ATLONA AT-GAIN-120 Amplifier / 70V or 8-ohm / 60 Watts Per-Channel / 2-Channels	1
	JBL CONTROL 28-1-WH Speaker / Surface Mount / 8" / 60W Tap / Pair / White	1
	ATLASIED AT100D Volume Control / 70V / 100 Watt / Decora / White / Rotary	1

Facility

Video		QTY
	BEST BUY CUSTOM PARTS (BBYB) - AV - \$100 Custom parts allowance for commercial (BBYB) clients - Fixed Pricing	8
Bulk Wire		QTY
	LIBERTY AV SOLUTIONS 24-4P-P-L6-EN-BLU (1000') Network Cable / Cat6 / Bulk (1000') / Plenum Rated / Blue	2
	C2G 29207 Speaker Wire / 18-2 / Shielded / 500ft / Plenum Rated / White	2

Services

Labor		QTY
	BEST BUY BB10886121 Commercial AV Hourly	92
	BEST BUY BB19338704 Commercial IT Hourly	4
	BEST BUY BB21027129 Field Project Management Labor	8
	BEST BUY BB21027131 Engineered Design And Documentation	8
	BEST BUY BB21029811 Engineered Solution Tracking	1

Location Summary

Location	Installed Price
Auditorium	\$37,575.00
Meeting Room 1	\$2,805.00
Meeting Room 2	\$2,805.00
Chamber Room	\$6,715.00
Facility	\$3,045.00
Services	\$11,885.00

Project Summary

Equipment:	\$52,940.00
Labor:	\$11,885.00
Total:	\$64,825.00

On behalf of Best Buy, thank you for the opportunity to work together on this solution, as well as any of your future technology needs. Please feel free to contact me at the phone number or email address listed below to discuss your proposal.

Sincerely,

Stephen Manero

Stephen.Manero@bestbuy.com

612-292-0849

Best Buy reserves the right to make adjustments to pricing and offers on Products and Services for reasons including, but not limited to, product discontinuation or unavailability and manufacturer price changes. We cannot confirm the availability or price of an item until you receive a final quote number from Best Buy and place your order. Despite our best efforts, sometimes an item in our catalog may not be available, the offer may have been misstated, or an item may be mispriced. For any of these reasons, we may cancel your order or we may contact you for instructions on the order. Due to the estimate nature of this bid, a Project Total variance of +/- 5% is assumed.

* State and local taxes along with freight charges are not included unless otherwise noted.

Quote Details [Print](#)**Contract:** Omnia Partners - Public Sector - R201203**Quote Number:** 243819531

Billing Address Andy Shelton
City of Fellsmere, FL
22 S ORANGE ST
FELLSMERE, FL 32948
Phone 772-413-1675

Shipping Address Andy Shelton
City of Fellsmere, FL
22 S ORANGE ST
FELLSMERE, FL 32948
Phone 772-413-1675

Qty	Product Description	Availability	Delivery Address	Price	Total Price
1	Peerless-AV - Hardware Kit - Zinc Catalog Business Item BB10088012 Manufacturer ACC415 Standard Delivery	In Stock	Shipping Address Ship to my address	\$15.99	\$15.99
2	Peerless ACC 800 - mounting component Catalog Business Item BB10168089 Manufacturer ACC800 Standard Delivery Not Returnable!	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$19.14	\$38.28
1	Tripp Lite SmartPro 500VA 300W 120V Line-Interactive UPS - 6 NEMA 5-15R Outlets, USB, DB9, Network Card Option, 1U Rack/Tower - UPS - 300 Watt - 500 VA Catalog Business Item BB10318784 Manufacturer SMART500RT1U Standard Delivery	In Stock	Shipping Address Ship to my address	\$249.00	\$249.00
1	Peerless SmartMount Universal Tilt Wall Mount ST660 - mounting kit Catalog Business Item BB10371043 Manufacturer ST660 Standard Delivery	In Stock	Shipping Address Ship to my address	\$118.00	\$118.00
1	Peerless DCS 200 - mounting component Catalog Business Item BB10420107 Manufacturer DCS200 Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$59.99	\$59.99
2	Peerless ACC 320 - power distribution strip Catalog Business Item BB10740659 Manufacturer ACC320 Standard Delivery Not Returnable!	In Stock	Shipping Address Ship to my address	\$67.99	\$135.98



1	Tripp Lite Surge Protector Swivel 6 Outlet Wallmount Direct Plug In 120V 1200 Joules Black - surge protector Catalog Business Item BB10797851 Manufacturer SWIVEL6 Standard Delivery	In Stock	Shipping Address Ship to my address	\$16.99	\$16.99
1	Peerless-AV - Precision Gear Ceiling Mount Projector Mount - Black Catalog Business Item BB10822576 Manufacturer PRG-UNV Standard Delivery	In Stock	Shipping Address Ship to my address	\$139.99	\$139.99
1	Atlas Sound AT100D - volume control Catalog Business Item BB10840190 Manufacturer AT100D Standard Delivery	In Stock	Shipping Address Ship to my address	\$33.95	\$33.95
1	C2G 25ft 3.5mm M/M Stereo Audio Cable - audio cable - 25 ft Catalog Business Item BB10887935 Manufacturer 40415 Standard Delivery	In Stock	Shipping Address Ship to my address	\$12.99	\$12.99
4	12" COAXIAL SPEAKER SYSTEM Catalog Business Item BB10916367 Manufacturer SM12CXT-B Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$700.00	\$2,800.00
4	SURFACE MOUNT FOR SM12CXT-B Catalog Business Item BB10916372 Manufacturer SM12CBKT-B Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$60.00	\$240.00
1	Peerless-AV - AEC0608 - Black Catalog Business Item BB11074206 Manufacturer AEC0608 Standard Delivery	In Stock	Shipping Address Ship to my address	\$129.99	\$129.99
1	C2G 25ft Power Extension Cord - Outlet Saver - 18 AWG - power extension cable - NEMA 5-15 to NEMA 5-15 - 25 ft Catalog Business Item BB11077086 Manufacturer 53410 Standard Delivery	In Stock	Shipping Address Ship to my address	\$12.99	\$12.99
2	Tripp Lite Rack Enclosure Cabinet Cantilever Fixed Shelf 40lb Capacity 1URM - rack shelf - 1U	In Stock	Shipping Address Ship to my address	\$50.99	\$101.98



Catalog Business
Item BB11114359
Manufacturer
SRSHELF2P1U

Standard Delivery

1	C2G 2m USB 3.0 Cable - USB A to USB B - M/M - USB cable - USB Type A to USB Type B - 6.6 ft Catalog Business Item BB11132122 Manufacturer 54174	In Stock	Shipping Address Ship to my address	\$9.99	\$9.99
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Standard Delivery

2	C2G 18 AWG Plenum-Rated Bulk Shielded Speaker Wire - bulk speaker cable - 500 ft Catalog Business Item BB11674712 Manufacturer 29207	In Stock	Shipping Address Ship to my address	\$300.00	\$600.00
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Standard Delivery

1	ClearOne WS800 - microphone Catalog Business Item BB19288905 Manufacturer 910-6004-010	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$80.99	\$80.99
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Standard Delivery

2	C2G 10m (32.8ft) HDMI Cable with Ethernet - High Speed In-Wall Rated - M/M - HDMI cable with Ethernet - 33 ft Catalog Business Item BB19289628 Manufacturer 42526	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$64.99	\$129.98
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Standard Delivery

1	JBL Commercial Series CSM 28 analog mixer - 8-channel Catalog Business Item BB19592084 Manufacturer CSM28	In Stock	Shipping Address Ship to my address	\$500.00	\$500.00
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Standard Delivery

1	Logitech Illuminated Living-Room K830 - keyboard - with touchpad - English Catalog Business Item BB19754182 Manufacturer 920-007182	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$56.99	\$56.99
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Standard Delivery

1	Atlona - HDMI Over 100M HDBaseT Receiver - Black Catalog Business Item BB19786032 Manufacturer AT-UHD-EX-100CE-RX	In Stock	Shipping Address Ship to my address	\$350.00	\$350.00
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Standard Delivery

1	JBL Professional Control 28-1 - speaker - for PA system Catalog Business Item BB19947436	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$525.00	\$525.00
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Manufacturer CONTROL 28-1-WH

Standard Delivery

1	JBL Commercial CSA 1300Z - power amplifier Catalog Business Item BB20456487 Manufacturer NCSA1300Z-0-US Standard Delivery	In Stock	Shipping Address Ship to my address	\$520.00	\$520.00
1	Insignia™ - 25' 4K Ultra HD HDMI Cable - Black Catalog Business Item BB20657509 Manufacturer NS-HG25507 Standard Delivery	Usually ships in 3 - 5 days	Shipping Address Ship to my address	\$79.99	\$79.99
7	ClearOne WS800 - wireless microphone Catalog Business Item BB20741100 Manufacturer 910-6003-004-C Standard Delivery	In Stock	Shipping Address Ship to my address	\$314.99	\$2,204.93
1	AT-UHD-SW-5000ED Catalog Business Item BB20789154 Manufacturer AT-UHD-SW-5000ED Standard Delivery	In Stock	Shipping Address Ship to my address	\$1,500.00	\$1,500.00
1	Logitech Rally - conference camera Catalog Business Item BB21039477 Manufacturer 960-001226 Standard Delivery	In Stock	Shipping Address Ship to my address	\$1,188.00	\$1,188.00
1	Apple - USB Type-C Digital AV Multiport Adapter - White Catalog Business Item BB21070522 Manufacturer MUF82AM/A Standard Delivery	Usually ships in 3 - 5 days	Shipping Address Ship to my address	\$69.99	\$69.99
1	Atlona - Gain 120W 2.0-Ch. Stereo/Mono Power Amplifier - Black Catalog Business Item BB21217143 Manufacturer AT-GAIN-120 Standard Delivery	In Stock	Shipping Address Ship to my address	\$788.00	\$788.00
2	Atlona AT-HDR-EX-100CEA-KIT (Transmitter & Receiver Units) - video/audio/infrared/serial extender - RS-232, HDMI, HDBaseT Catalog Business Item BB21227584 Manufacturer AT-HDR-EX-100CEA-KIT Standard Delivery	In Stock	Shipping Address Ship to my address	\$628.00	\$1,256.00



2	Logitech Strong - USB-C cable - USB Type A to 24 pin USB-C - 33 ft Catalog Business Item BB21407294 Manufacturer 939-001799 Standard Delivery	In Stock	Shipping Address Ship to my address	\$250.00	\$500.00
1	Logitech Strong - USB-C cable - USB Type A to 24 pin USB-C - 82 ft Catalog Business Item BB21472981 Manufacturer 939-001802 Standard Delivery	In Stock	Shipping Address Ship to my address	\$550.00	\$550.00
1	Best Buy essentials™ - 10' Cat-6 Ethernet Cable - Blue Catalog Business Item BB21696558 Manufacturer BE-PEC6ST10 Standard Delivery	Usually ships in 3 - 5 days	Shipping Address Ship to my address	\$6.99	\$6.99
2	Logitech TV Mount For Video Bars - camera mount Catalog Business Item BB21701421 Manufacturer 952-000041 Standard Delivery	In Stock	Shipping Address Ship to my address	\$199.00	\$398.00
2	Peerless-AV - Paramount Swivel For Most 55" - 86" TVs - Black Catalog Business Item BB21728072 Manufacturer PR560M Special Delivery	In Stock	Shipping Address Ship to my address	\$359.99	\$719.98
1	Best Buy essentials™ - 12' 4K Ultra HD HDMI Cable - Black Catalog Business Item BB21807043 Manufacturer BE-SF1182 Standard Delivery	Usually ships in 3 - 5 days	Shipping Address Ship to my address	\$10.99	\$10.99
5	Best Buy essentials™ - 6' 4K Ultra HD HDMI Cable - Black Catalog Business Item BB21807045 Manufacturer BE-SF1162 Standard Delivery	Usually ships in 3 - 5 days	Shipping Address Ship to my address	\$6.99	\$34.95
1	Sunpak - 6240DLX 62" Tripod Catalog Business Item BB22036379 Manufacturer 620-624DLXB Standard Delivery	Usually ships in 3 - 5 days	Shipping Address Ship to my address	\$99.99	\$99.99
2	Cat6 Unshielded - 1000 Ft Reel Catalog Business Item BB22054554 Manufacturer 24-4P-P-L6- Standard Delivery	In Stock	Shipping Address Ship to my address	\$450.00	\$900.00



3	Samsung - BEC-H Series 65" 4K UHD Commercial TV Catalog Business Item BB22122248 Manufacturer BE65C-H Special Delivery	In Stock	Shipping Address Ship to my address	\$710.00	\$2,130.00
1	Dell OptiPlex 7010 - micro - Core i5 13500T 1.6 GHz - vPro Enterprise - 16 GB - SSD 256 GB Catalog Business Item BB22122904 Manufacturer C36TD Standard Delivery	In Stock	Shipping Address Ship to my address	\$734.99	\$734.99
1	4K/HDR HDMI 2.0b HDBaseT HDMI 1X4 Exten Distance D Catalog Business Item BB22127912 Manufacturer AT-HDR-CAT- 4ED Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$1,650.00	\$1,650.00
2	Logitech Rally Bar Huddle - all-in-one video conferencing bar for huddle and small meeting rooms - video conferencing device Catalog Business Item BB22144102 Manufacturer 960-001485 Standard Delivery	In Stock	Shipping Address Ship to my address	\$1,500.00	\$3,000.00
92	Commercial AV - Custom Labor Hourly Catalog Business Item BB10886121 Manufacturer 8739314 Standard Delivery	In Stock	Shipping Address Ship to my address	\$110.00	\$10,120.00
4	Commercial IT - Custom Labor Hourly Catalog Business Item BB19338704 Manufacturer 3007037 Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$110.00	\$440.00
8	Engineered Design and Documentation Catalog Business Item BB21027131 Manufacturer 6240897 Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$154.00	\$1,232.00
8	Field Project Management Labor Catalog Business Item BB21027129 Manufacturer 6240896 Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$154.00	\$1,232.00
1	Engineered Solution Tracking Catalog Business Item BB21029811 Manufacturer 5732319 Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$0.40	\$0.40



12	Commercial AV - \$100 Parts Catalog Business Item BB10885770 Manufacturer 7767133 Standard Delivery	In Stock	Shipping Address Ship to my address	\$100.00	\$1,200.00
1	COSMO TNSD 226D HD1.3 220 Catalog Business Item BB21152861 Manufacturer 24848E Special Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$6,000.00	\$6,000.00
1	At-Hdvs-200-Tx-Wp Catalog Business Item BB20664656 Manufacturer AT-HDVS- 200-TX-WP Standard Delivery	In Stock	Shipping Address Ship to my address	\$488.00	\$488.00
1	The Vaddio- 998-6000-006- Dual Rack Mount Kit for Vaddio 1/2 Rack Enclosures. Catalog Business Item BB20880899 Manufacturer 998-6000- 006 Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$122.00	\$122.00
1	AV Bridge Mini N/A Catalog Business Item BB21297889 Manufacturer 999-8240- 000 Standard Delivery	In Stock	Shipping Address Ship to my address	\$2,000.00	\$2,000.00
1	ClearOne Gooseneck Microphone (12 inch) - Audio Compression - microphone Catalog Business Item BB20724969 Manufacturer 910-6002- 124-C Standard Delivery	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$350.00	\$350.00
1	Panasonic ET-DLE060 - short- throw zoom lens - 9.16 mm - 12.1 mm Catalog Business Item BB21057087 Manufacturer ET-DLE060 Standard Delivery	In Stock	Shipping Address Ship to my address	\$4,000.00	\$4,000.00
1	Panasonic PT-RZ790WU7 - DLP projector - LAN - white Catalog Business Item BB21753335 Manufacturer PT- RZ790WU7 Special Delivery	In Stock	Shipping Address Ship to my address	\$8,600.00	\$8,600.00
1	Sony - Streaming Blu-ray Disc player with Built-In Wi- Fi and HDMI cable - Black Catalog Business Item BB21717246 Manufacturer BDPBX370	Usually ships in 3 - 5 days	Shipping Address Ship to my address	\$74.99	\$74.99



Standard Delivery

1	ClearOne WS880 - wireless audio receiver for wireless microphone system Catalog Business Item BB20728274 Manufacturer 910-6000-804-C	Usually ships in 1 - 2 weeks	Shipping Address Ship to my address	\$2,317.99	\$2,317.99
Standard Delivery					

Product Total:	\$62,879.25
Special Delivery:	\$1,053.87
Standard Delivery:	\$720.64
Tax:	\$0.00

This Order is estimated as tax exempt. Exempt status is determined at the time of order through enrolling with our "Tax Exempt Quick Card" or by using a Government purchase card. For more details please click [here](#)

QUOTE TOTAL: \$64,653.76

Expiration Date

- 12/30/23

Shipping Method(s)

- (Instructions:)

Payment Type

- null null



Best Buy For Business is pleased to provide the quote you requested. We realize you have numerous options for procuring IT Products and appreciate that you contacted us. We will honor the prices on this quote through the expiration date identified above.

Given the rapid change in technology and product availability, Best Buy For Business cannot guarantee all the items on this quote will be available for purchase in the future. In that case, we will work together to make changes or modifications to your quote or order.

Thank you for partnering with Best Buy For Business on this opportunity.

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Best Buy Business
7601 Penn Avenue South • Richfield, MN 55423-3645
Phone: 603-391-6647 • Fax: 612-545-4004



**City Council
Agenda Request Form**

Meeting Date: January 4, 2024

Agenda Item No. 12(h)

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input type="checkbox"/> ORDINANCE ON FIRST READING

<input checked="" type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input type="checkbox"/> CONSENT AGENDA |
|--|---|

SUBJECT: Final Update to the ARPA Funding List

RECOMMENDED MOTION/ACTION: Approve ARPA Amendment.

Approved by City Manager Mark Malton **Date:** 12/28/23

Originating Department: Finance	Costs: See Attachment Funding Source: ARPA Acct. #	Attachments:
Department Review: <input type="checkbox"/> City Attorney _____ <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input checked="" type="checkbox"/> FPD _____	<input type="checkbox"/> Public Works _____ <input checked="" type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____: Please initial one.

Summary Explanation/Background:

The City of Fellsmere has received an award of \$2,852,362 from the Federal government as part of the American Rescue Plan Act. Previously, Council members elected to treat all funds as "Lost Revenue" thus the City no longer must track the use of funds by any one of the four original criteria. Funds can now be used for any reason except debt payments, pension payments, or reserves.

After the last Council meeting of December 2023, the US Treasury released an Interim Final Rule with effective date of December 26, 2023, prompting staff to recommend the remaining 81% (\$2.294 M) of ARPA funds be allocated to the City's General Fund. Strategically, this flexibility would allow ARPA funds to offset the cost of payroll while easing the time constraints to incur an obligation prior to December 31, 2024. This single allocation choice would also minimize the administrative reporting and compliance requirements versus applying the funds directly to the various projects noted on the ARPA list. Currently, the 1st quarter of the fiscal year 2024 payroll totals \$582,254.99 which includes salaries, taxes, and benefits, excluding retirement contributions and HRA funding. If payroll trend continues, ARPA funds would be obligated within the required timeframe, mitigating the need to track ARPA funded projects as previously listed.

City Council
Agenda Request Form

Meeting Date: January 4, 2024

Agenda Item No. 12(c)

☐ PUBLIC HEARING
☐ Ordinance on Second Reading
☐ Public Hearing

☐ RESOLUTION

☐ DISCUSSION

☐ ORDINANCE ON FIRST READING

☐ BID/RFP AWARD

☒ GENERAL APPROVAL OF ITEM

☐ CONSENT AGENDA

☐ Other:

SUBJECT: 2024 Municipal Elections Agreement with the Indian River County Supervisor of Elections

RECOMMENDED MOTION/ACTION: Authorize the Mayor and City Clerk to execute the "Municipal Elections Agreement" with the Indian River County Supervisor of Elections for the 2024 elections.

Approved by City Manager Mark Mathes Date: 12/28/23

Originating Department: City Clerk	Costs: \$ Funding Source: Acct. #	Attachments: -Municipal Elections Agmt -Letter from Indian River County Supervisor of Elections
Department Review: <input checked="" type="checkbox"/> City Attorney _____ <input type="checkbox"/> Comm. Dev. _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input type="checkbox"/> Public Works _____ <input checked="" type="checkbox"/> City Clerk _____ <input type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone ____X_____ or Not applicable in this case _____: Please initial one.

Submittal information: Council meets on the first and third Thursday's of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Wednesday of each month. Therefore the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Wednesday deadline.

Summary Explanation/Background:

This is the Municipal Elections Agreement with the Indian River County Supervisor of Elections to conduct the City of Fellsmere's November General Election and the Post-Election Audit.

MUNICIPAL ELECTIONS AGREEMENT

THIS AGREEMENT by and between the **INDIAN RIVER COUNTY SUPERVISOR OF ELECTIONS** (hereinafter "SOE") whose mailing address is 4375 43rd Avenue, Vero Beach, Florida, 32967, and the **CITY OF FELLSMERE** (hereinafter "Municipality") whose mailing address is 22 S. Orange Street, Fellsmere, FL 32948, to conduct the municipality's November municipal election.

RECITALS:

WHEREAS, Chapters 97 to 106, Florida Statutes, constitute the Florida Election Code (the "Code") which applies to municipalities where expressly so stated; and

WHEREAS, Sec. 100.3605, Florida Statutes, states... *The Florida Election Code, chapters 97-106 shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision*; and

WHEREAS, the municipality and the SOE desire to work together to provide for municipal elections and to allocate certain responsibilities and expenses between the two parties to ensure that the provisions of the Code are followed during the municipal elections; and

WHEREAS, the SOE and the municipality wish to enter into this Agreement to set out the terms of this coordinated program.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for the mutual benefit of the municipality, its constituents, and the SOE, it is agreed as follows:

1. **PURPOSE:**

The purpose of this Agreement is to set forth the terms and conditions under which services will be provided by the SOE and staff to the municipality for municipal elections and to set forth the responsibilities of both parties so that there is a clear understanding of the rights and responsibilities of all parties. Such rights and responsibilities shall apply to the November General Election which is held the first Tuesday after the first Monday in November, and the Post-Election Audit, this Agreement does not apply to any Special Election or Recall Election called by the municipality that is to be held outside of the scheduled General Election.

2. **DATE OF MUNICIPAL ELECTION:**

The date of the City of Fellsmere Municipal Election is November 5, 2024.
This Agreement covers the November municipal election and the post-election audit for the year 2024.
Either party to the Agreement may elect to withdraw from the Agreement upon written notice providing at least four (4) months' notice.

3. ELECTION FEES FOR MUNICIPAL ELECTIONS:

Municipal Elections that are held in conjunction with county, state, or federal elections: \$1.00 per registered voter limited to regularly scheduled city/town council races. There will be an additional fee for amendments and/or referendums, which exceed print area specified below at a cost of: \$0.50 per registered voter.

Total print area for all amendments and /or referendums is limited to 2 ½" wide by 6 ½" length of total print area for a three column ballot layout, 5" wide by 4" length of total print area for a two column ballot layout, and 7 1/2" wide by 3" length of total print area for a one column ballot layout. The SOE determines the number of columns based on ballot content.

Municipal Elections that are not held in conjunction with county, state, or federal elections: \$3.00 per registered voter (based on 1-card ballot). Each additional ballot card: \$0.50 per registered voter.

It is the sole discretion of the SOE to agree to conduct any Special Election or Recall Election, which is NOT held in conjunction with a Presidential Preference Primary Election, Primary Election, or General Election.

In the event the SOE agrees to conduct a Special Election or Recall Election, which is NOT held in conjunction with a Presidential Preference Primary Election, Primary Election, or General Election; the above fees for municipal elections that are NOT held in conjunction with county, state, or federal elections shall apply.

In the event of a recount (machine and/or manual), the municipality will be invoiced for the costs associated with the recount.

4. RESPONSIBILITIES OF BOTH THE MUNICIPALITY AND THE SOE FOR MUNICIPAL ELECTIONS:

A. Notice and Advertisement

(1) Municipality

(a) The Municipal Charter shall designate the Canvassing Board for the municipality's election, which shall convene in a publically noticed meeting, open to the public, in accordance with Section 286.011, Florida Statutes and Section 102.141(2), Florida Statutes.

(b) The municipality shall be responsible for all advertising that may be required by the municipality's charter or other local requirements that are outside of the advertising required by Florida Election law, at its own expense.

(c) Request that the Supervisor of Elections conduct the municipality's election.

(d) The municipality's canvassing board will be responsible for canvassing the election, when the election is not held in conjunction with county, state, or federal elections.

(e) The municipality shall assure all political boundaries are accurate, up to date, and provided to the SOE no later than one hundred and twenty (120) days prior to each election.

(f) The qualifying officer/municipal clerk, at the time of qualifying, shall give written notice of the time and location of the Public Logic & Accuracy Test to each candidate qualifying with the municipality and obtain a signed receipt that the notice has been given according to Sec. 101.5612(2), Florida Statutes.

(2) SOE

(a) Publish legal notices required by Florida Statutes.

B. Qualifying Candidates

(1) Municipality

(a) Provide qualifying packets to candidates.

(b) Accept and process all qualifying papers and fees.

(c) Provide the SOE with a copy of the candidate's Loyalty Oath at the time of qualifying.

(d) Respond to all candidate inquiries and questions.

(e) Respond to all legal inquiries and questions.

(f) Respond to all media inquiries.

(g) Verify signatures of electors on any qualifying petitions submitted by candidates (if applicable).

(2) SOE

None

C. Ballots

(1) Municipality

All ballot language must comply with Section 101.161(1), F.S. and Rule 1S-2.032, Florida Administrative Code.

(a) Provide SOE the official title and language for any amendments and/or referendum questions seven (7) days prior to the qualifying deadline in Microsoft Word format. If mandated to provide additional languages other than English, the municipality must provide the official title, amendments and/or referendum questions in all mandated languages. Indian River County is mandated by court order to provide ballot language in Spanish.

(b) Provide the SOE with the official election title, candidate names, and ballot order, on the last day of qualifying prior to the election. All ballot language must be provided in Microsoft Word format. The municipality shall provide pronunciation guidelines for the qualified candidates to be used with the audio ballot.

(c) Review, amend (if necessary) and approve ballot proof prepared and provided by SOE to the municipality within one (1) business day of receipt from the SOE.

(d) Any modifications to the approved ballot by the municipality, is not guaranteed after final approval from the municipality. Any requested modification must be provided to the SOE in writing and signed by the appropriate parties, and in accordance with any special act, charter, or ordinance provision.

(2) SOE

(a) Provide ballot proof to the municipality to review, amend (if necessary) and approve. Municipality has one (1) business day after receipt of ballot proof to review, amend (if necessary) and approve ballot.

(b) SOE shall prepare file for ballot printing and audio ballot based on information received from the Municipal Clerk and shall arrange for the printing, preparation, receipt, and testing of the ballots to be used in the municipal election.

(c) Black ink text only on ballots.

(d) Receive, securely store, and account for all ballots until disbursed to polling places.

(e) Control all access to un-voted ballots while in the possession of the SOE.

(f) SOE will provide sample ballots in accordance with the Election Code.

(g) SOE will post precinct specific sample ballots on the SOE website.

D. Equipment Testing

(1) Municipality

(a) Municipal Canvassing Board shall convene for the Public Logic and Accuracy Test as per Florida Statute 101.5612(2). For municipal elections held in conjunction with county, state, or federal elections, the County Canvassing Board will preside over the election.

(2) SOE

(a) Develop a unique test deck to be used for the Public Logic & Accuracy Test.

(b) Conduct the Public Logic & Accuracy Test of the automatic tabulating equipment as required by Section 101.5612, Florida Statutes.

E. Early Voting (OPTIONAL) - The SOE is not required to conduct early voting for municipal elections that are not held in conjunction with county, state or federal elections. The responsibilities of the municipality listed below under Section E1 (a) – (b) and the responsibilities of the SOE listed under Section E2 (a) – (d) are only applicable if the municipality agrees to offer early voting and pay all associated costs which are indicated in Section E1 below.

(1) Municipality

- (a) Reimburse SOE for all early voting expenses incurred by the SOE.
- (b) Municipality shall conduct its early voting activities in accordance with Florida Statute 101.657.

(2) SOE

- (a) Secure early voting site(s).
- (b) Prepare all supplies needed for each early voting site.
- (c) Provide poll workers to staff early voting site(s) and additional personnel as needed.
- (d) Train poll workers.
- (e) Provide staffing to accept voted ballots daily at the SOE office.

F. Vote-by-Mail

(1) Municipality

- (a) Refer all requests for vote-by-mail ballots to SOE.
- (b) If the SOE office is required by federal or state law to pay return postage on vote-by-mail ballots, the municipality will be charged the postage costs for all returned voted ballots.
- (c) If the SOE is required by federal or state law to mail every registered voter a vote-by-mail ballot, the municipality will be charged an additional \$.50 per registered voter for elections that are held in conjunction with county, state, or federal elections and an additional \$.75 per registered voter for elections that are not held in conjunction with county, state, or federal elections.

(2) SOE

- (a) Determine eligibility and compile vote-by-mail ballot file.
- (b) Accept all requests for vote-by-mail ballots by telephone, mail, online, or in person.
- (c) Prepare and mail vote-by-mail ballots as required per Florida Statute.
- (d) Deliver vote-by-mail ballots to the post office.
- (e) Receive vote-by-mail ballots at the SOE office and verify signatures and other identifying information required by Florida Statute on vote-by-mail certificate envelopes. Notify voters of a missing signature or if the signature on the voter's certificate envelope does not match their signature on their voter record or if any other identifying information required by Florida Statute is missing or does not match the voter's information on file with the SOE office.

(f) Prepare and open vote-by-mail ballots for tabulation.

(g) Notify voter of the disposition of their rejected vote-by-mail ballot after determination by the Canvassing Board, as required by Florida Statute.

G. Polling Places

(1) Municipality

None

(2) SOE

(a) Contract with facilities for use as polling places.

(b) Confirm polling place accessibility and ADA compliance.

(c) Notify voters, as required by law, if a voter's assigned polling place is to be temporarily relocated or unavailable. The Supervisor is responsible for mailing "Polling Place Change Notices" to affected voters, the cost of which shall be reimbursable to the SOE.

(d) Notify voters and the municipality of permanent polling place change(s).

H. Precinct Supplies

(1) Municipality

None

(2) SOE

(a) Prepare precinct supplies for each polling place location.

(b) Prepare precinct registers for each polling place location.

(c) Contract with moving company for delivery and pick-up of polling place voting equipment and supplies.

I. Poll Workers

(1) Municipality

None

(2) SOE

(a) Hire poll workers.

- (b) Schedule and notify poll workers of training classes.
- (c) Provide training materials and training for poll workers.

J. Poll Watchers

(1) Municipality

None

(2) SOE

(a) Poll watcher designations must be submitted to the SOE office before noon of the second Tuesday preceding the election. Poll watchers must be approved by the SOE on or before the Tuesday prior to the election. Designations for early voting sites (if applicable) shall be submitted in writing to the SOE office before noon at least 14 days before early voting begins. The poll watchers for early voting sites shall be approved by the SOE no later than 7 days before early voting begins per Florida Statute 101.131. Approved poll watcher badges will be available for pick-up at the SOE office upon notification.

K. Election Day Support

(1) Municipality

None

(2) SOE

- (a) Provide technical support personnel as needed.
- (b) Provide phone support to respond to poll workers/voters on Election Day.

L. Ballot Tabulation of Election Results

(1) Municipality

- (a) Municipal Canvassing Board present (only applies when the election is not held in conjunction with county, state or federal elections).

(2) SOE

- (a) Deliver all voted ballots and other necessary election related items to SOE office after the polling places have closed on Election Day.
- (b) Provide technical staff and equipment to tabulate election results.
- (c) Post election results on SOE website and provide the same to local municipal television (upon request).

(d) Provide the municipality with unofficial election results upon conclusion of tabulation and canvassing of ballots cast on Election Day.

M. Post-Election Day

(1) Municipality

(a) Municipal Canvassing Board shall canvass provisional ballot, and vote-by-mail and provisional ballot cure affidavits. For municipal elections held in conjunction with county, state, or federal elections, the County Canvassing Board will preside over the above activities.

(b) Municipal Canvassing Board shall certify election results and Conduct of Elections report. For municipal elections held in conjunction with county, state, or federal elections, the County Canvassing Board will preside over the above activities.

(2) SOE

(a) Provide the municipality with an official certification of election results and Conduct of Elections report.

(b) Sort, inventory, pack and store all necessary election records and ballots until the expiration of the retention period prescribed by Florida law.

(c) Process polling place affirmation forms.

(d) Notify voter of the disposition of their rejected vote-by-mail ballot or provisional ballot after the determination by the Canvassing Board, as required by law.

(e) Respond to public records requests regarding records kept on behalf of the municipality.

(f) Record voting history for each voter who voted.

N. Post-Election Audit

(1) Municipality

(a) Municipal Canvassing Board to randomly select precinct(s)/race(s) for audit. For municipal elections held in conjunction with county, state, or federal elections, the County Canvassing Board will preside over the above activities.

(b) Municipal Canvassing Board to preside over post-election audit. For municipal elections held in conjunction with county, state, or federal elections, the County Canvassing Board will preside over the above activities.

(2) SOE

(a) Organize precinct/race information for the Canvassing Board to randomly select the race(s) and precinct(s) that shall be audited according to Florida Statute 101.591. The SOE has the option of auditing ballots using an automated system pursuant to Florida Statute 101.591.

- (b) Organize and prepare ballots for post-election audit. If an automated system is used to conduct the post-election audit, the SOE will be responsible for all ballot scanning and report preparation.
- (c) Provide SOE staff to conduct post-election audit.

O. Recount

(1) Municipality (Applies only when the election is not held in conjunction with county, state or federal elections).

- (a) Municipal Canvassing Board will be responsible for the administration of the recount, with support and guidance from the SOE.
- (b) Notify the candidates of the time, date, and location of the recount.
- (c) Post public notice(s) of the recount with the time, date, and location.
- (d) Recording and minutes as stipulated in Rule 1S-2.031 Recount Procedures.
- (e) Canvassing Board to review with counting teams and observers, the Florida Statutes and rules, which apply to recounts, specifically Rule 1S-2.031 Recount Procedures; and Rule 1S-2.027 Standards for Determining Voter Choice on a Ballot.
- (f) Reimburse the SOE for all staff salaries/overtime and all other expenses required to conduct the recount.

(2) SOE

- (a) Post public notice(s) of the recount with the time, date, and location at the SOE office and website.
- (b) Test tabulating equipment as required by Florida Statute 101.5612.
- (c) Prepare and organize ballots for recount processing.
- (d) Conduct recount as required by Florida Statute 101.5612.
- (e) Provide counting teams for examining out-stacked ballots (overvoted and blank ballots), in the event a manual recount is ordered.
- (f) Provide official certification of the election as determined by the Canvassing Board.
- (g) In the event of a recount (machine and/or manual), the municipality will be invoiced for the costs associated with the recount.

P. Cancellation of Election

(1) Municipality

- (a) If a scheduled election is cancelled after the qualifying period, the municipality is responsible for all SOE costs incurred in this Agreement as of the cancellation date.

(2) **SOE**

None

5. **HOLD HARMLESS COVENANT:**

To the extent allowed by law, each party shall indemnify and hold the other harmless from all claims brought during the term of this Agreement by third parties, including reasonable attorneys' fees, court costs and expenses, which may arise out of or be attributed to the negligence of the indemnitor's employees in the performance of any of the covenants, agreements, terms, or conditions to be performed or complied with under this Agreement. Neither party's liability to the other shall include punitive damages or interest for the period before judgment. Nothing contained herein shall be construed as a waiver of any immunity from, or limitation of, liability either party has under the Doctrine of Sovereign Immunity of Section 768.28 Florida Statutes. Additionally, neither party shall be liable pursuant to this indemnity to pay a claim or a judgment by any one person or any claim or judgment, or portions thereof, which when totaled with all other claims or judgments paid arising out of the same incident or occurrence, which exceeds the limits of liability as set forth in Section 768.28(5) Florida Statutes, provided, that the payment of said claim(s) shall be further limited to the actual amount of insurance proceeds paid for such claim(s) covered by this indemnification. This indemnity specifically excludes any requirement for one party to indemnify the other party for the other party's negligence or to assume any liability for the other party's negligence as provided in Section 768.28 (19) Florida Statutes.

6. **CHANGE IN LAW:**

It is understood that the provisions of this Agreement are based on current state or federal law, and if any changes in election law should occur during the term of this Agreement, those changes will supersede the terms of this Agreement where applicable.

7. **NOTICES:**

Mail notices affecting the provisions of this Agreement may be delivered in person or sent via U.S. mail, to the individual designated below, until either party furnishes the other party written instruction to contact another individual.

For the SOE:	For the Municipality:
Supervisor of Elections 4375 43 rd Avenue Vero Beach, Florida 32967 Attention: Leslie Rossway Swan	<u>City of Fellsmere</u> <u>22 S. Orange Avenue</u> <u>Fellsmere, FL 32948</u> <u>Attention: Maria Suarez-Sanchez</u>

8. **SEVERABILITY:**

If any clause, section, or provision of this Agreement shall be declared to be unconstitutional, invalid or unenforceable for any cause or reason, or is abrogated or negated by a change in law, the same shall be eliminated from this Agreement, and the remaining portion of this Agreement shall be in full force and effect and be valid as if such invalid portions thereof had not been incorporated herein.

9. **EFFECTIVE DATE:**



The Effective Date of this Agreement shall be the latest date of execution by duly authorized representatives of SOE and MUNICIPALITY as shown on the signature page hereto.

10. **NO MODIFICATION EXCEPT IN WRITING:**

This is the complete and final Agreement between the parties. No representations other than those set forth herein shall be binding upon the parties. No modification of this Agreement shall be effective unless submitted in writing and signed by both parties, and their duly authorized representatives.

IN WITNESS WHEREOF, we, the undersigned, do hereby state that we have the authority to bind and obligate as promised herein, SOE and MUNICIPALITY for purposes of executing this Agreement on the dates set forth below.

WITNESSES:

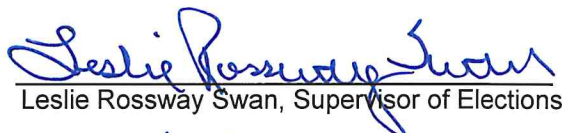
ATTEST:

_____, Municipal Clerk

(Affix Municipal Seal)

As to the SOE

SUPERVISOR OF ELECTIONS
INDIAN RIVER COUNTY


Leslie Rossway Swan, Supervisor of Elections

Date: 12/5/2023

As to the MUNICIPALITY:

INSERT NAME OF MUNICIPALITY

_____, Mayor

Date: _____



Leslie R. Swan

VoteIndianRiver.gov

Indian River County Supervisor of Elections

4375 43rd
Avenue
Vero Beach, FL 32967
772-226-4700

December 7, 2023

Maria Suarez-Sanchez
City Clerk
City of Fellsmere
22 S. Orange Street
Fellsmere, FL 32948

RE: 2024 Municipal Elections Agreement

Dear Ms. Suarez-Sanchez:

Enclosed please find two copies of the Indian River County Supervisor of Elections "Municipal Elections Agreement" for the calendar year of 2024. Please execute both agreements, return one copy to our office, and keep one copy for your files. Should you have any questions or require any additional information please do not hesitate to contact me.

Sincerely,

Leslie Rossway Swan
Supervisor of Elections

Enclosures

City of Fellsmere City Council
Agenda Request Form

Meeting Date: January 4, 2024

Agenda Item No. 12(j)

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input checked="" type="checkbox"/> ORDINANCE ON FIRST READING

<input type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input type="checkbox"/> CONSENT AGENDA |
|--|---|

SUBJECT: Comprehensive Plan Text Amendment for Fellsmere 392.

RECOMMENDED MOTION/ACTION: Conduct first reading and set second reading and first public hearing for February 1, 2024

Approved by City Manager Mark Mathis **Date:** 12/28/23

Originating Department:	Costs: Funding Source: Acct. #	Attachments: Ordinance 2024-01. Draft Annexation Agreement Draft Development Agreement Preliminary Development Plan
Department Review: <input checked="" type="checkbox"/> City Attorney _____ <input checked="" type="checkbox"/> Comm. Dev. _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>X</u> Please initial one.

Submittal information: Council meets on the first and third Thursday's of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

Developers of a 392-acre parcel on the north side of CR512 east Interstate 95 (I95) are requesting a future land use and text amendment to the Comprehensive Plan. The future land use amendment is to adjust the line between REAC and LDMXN future land use designations on the property to align the proposed parcel lines of the commercial plat. The text amendment adjusts certain of their site specific policies. The Applicant is also requesting an amendment to the Annexation Agreement for the same reasons. The Annexation Agreement amendment will be under a separate item after the Comprehensive Plan amendment is approved by the State..

Pursuant to our land development code, the zoning will be Planned Development District given the size of the parcel. The Planned Development will be under a separate item after the Comprehensive Plan amendment is approved by the State.

Attached for perusal is the draft Development Agreement, Draft Annexation Agreement and current iteration of the Preliminary Development Plan.

**ORDINANCE
NO. 2024-01**

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE TEXT OF THE COMPREHENSIVE PLAN AMENDING CHAPTER 1. FUTURE LAND USE ELEMENT GOAL FLUE B. FUTURE LAND USE MAP, OBJECTIVE FLUE B-4 FELLSMERE 392 AND AMENDING THE COMPREHENSIVE FUTURE LAND USE MAPS TO CHANGE THE LAND USE CLASSIFICATION FROM REGIONAL EMPLOYMENT ACTIVITY CENTER (REAC) TO LOW DENSITY MIXED USE NEIGHBORHOOD (LDMXN) FOR 0.85 ACRES, MORE OR LESS; LOCATED IMMEDIATELY EAST OF INTERSTATE 95 AND NORTH OF COUNTY ROAD 512 WITHIN THE DEVELOPMENT KNOWN AS “FELLSMERE PRESERVE”; PROVIDING FOR RATIFICATION; AUTHORITY; COMPREHENSIVE PLAN TEXT AMENDMENT; MAP DESIGNATION; TRANSMITTAL PHASE; ADOPTION PHASE; TRANSMITTAL OF DRAFT PLAN AMENDMENT AND FINAL ADOPTION DOCUMENTS; COMPILATION; SEVERABILITY; CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapters 163 and 166, Florida Statutes, provides authority for the City of Fellsmere to prepare and enforce Comprehensive Plans for the development of the City; and

WHEREAS, Section 163.3161 et. seq. Florida Statutes (2023), established the Community Planning Act, which mandates the preparation of comprehensive plans and unified land development regulations for all units of local government; and

WHEREAS, the Florida Legislature has reconfirmed that Sections 163.3161 through 163.3217, Florida Statutes (2023), provides the necessary statutory direction and basis for city officials to carry out their comprehensive planning and land development regulations powers, duties and responsibilities; and

WHEREAS, the Comprehensive Plan has been found to be in compliance by the Department of Economic Opportunity; and

WHEREAS, Sections 163.3184 and 163.3187 Florida Statutes (2023), provide authority to adopt this Ordinance amending the Comprehensive Plan; and

WHEREAS, the Planning and Zoning Commission acting as the Local Planning Agency has reviewed the proposed changes to the Comprehensive Plan and held an advertised public hearing on _____, 2024 and recommended to the City Council the adoption of the amendments to the Comprehensive Plan; and

WHEREAS, based upon public hearings and due consideration, the City Council believes that the health, safety, welfare, environmental and general conditions of the citizens of the City are furthered by the amendments to the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. RATIFICATION. The above recitals are hereby ratified, adopted and incorporated herein as legislative findings of the City Council.

SECTION 2. AUTHORITY. This Ordinance is being adopted pursuant to Article VIII, Section 2, Constitution of the State of Florida; Chapter 166, Part I, Florida Statutes (2023), and Chapter 163, Part II, Florida Statutes (2023).

SECTION 3. COMPREHENSIVE PLAN TEXT AMENDMENT. The Comprehensive Plan Chapter 1. Future Land Use Element Goal FLUE B. Future Land Use Map Objective FLUE B-4 Fellsmere 392 to read as set forth in Exhibit "A" attached hereto and by this reference made a part hereof.

SECTION 4. MAP DESIGNATION. Subject to the conditions set forth in Chapter 1 Future Land Use Element Goal FLUE B. Future Land Use Map Objective FLUE B-4 Fellsmere Preserve, LLC the Comprehensive Plan Future Land Use Maps shall be amended to include the following described land and designate the same in accordance with the requirements of Florida Law as follows:

LOW DENSITY MIXED USE NEIGHBORHOOD (LDMXN)

Legal Description and Sketch.

See Exhibit "B" attached hereto and by this reference made a part hereof.

SECTION 5. TRANSMITTAL PHASE. The Comprehensive Plan amendment to Chapter 1. Future Land Use Element Goal FLUE B. Future Land Use Map Objective FLUE B-4 Fellsmere 392 as set forth in Exhibit "A" and amendment to the Future Land Use Maps as set forth in Exhibit "B" are approved for transmittal to the review agencies and the State Land Planning Agency (Florida Department of Commerce) as provided in Section 163.3184 Florida Statutes 2023, within ten (10) working days after the initial public hearing.

SECTION 6. ADOPTION PHASE. The State land planning agency (Florida Department of Commerce) and reviewing agencies have reviewed the amendments as contained herein and had no comments related to important state resources and facilities that would be adversely affected by the amendments. Therefore, the text amendment to Chapter 1. Future Land Use Element Goal FLUE B. Future Land Use Map Objective FLUE B-4 Fellsmere 392 as set forth in Exhibit "A" and the Future Land Use Map amendment as set forth in Exhibit "B" are adopted as of the effective date of this Ordinance.

SECTION 7. TRANSMITTAL OF DRAFT PLAN AMENDMENT AND FINAL ADOPTION DOCUMENTS. The City Manager is directed to transmit a certified copy of this Ordinance and the Comprehensive Plan amendments and appropriate supporting data and analyses to reviewing agencies designated under Section 163.3184 (3) Florida Statutes 2023 within ten (10)

working days after the initial public hearing and proceed in accordance with the provisions of Chapter 163, Part II, Florida Statutes 2023. The adopted Comprehensive Plan amendments, along with all supporting data and analysis shall be transmitted within ten (10) working days after the second public hearing to the State land planning agency (Florida Department of Commerce) and any other agency or government that provided timely comments. See Section 163.3184(3) (b) 1 and (c) 2, Florida Statutes (2023).

SECTION 8. COMPILATION. The provisions of this Ordinance may be incorporated into the City of Fellsmere, Florida Comprehensive Plan and the word “ordinance” may be changed to “section”, “article”, “chapter”, or other appropriate word, and the sections of this Ordinance may be re-titled, re-numbered or re-lettered, to accomplish such condition.

SECTION 9. SEVERABILITY. If any section, part of a sentence, phrase or word of this Ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part.

SECTION 10. CONFLICTS. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of conflict.

SECTION 11. EFFECTIVE DATE. As set forth in Section 163.3184 Florida Statutes 2023, the effective date of this Comprehensive Plan amendment, if the amendment is not timely challenged, shall be as set forth in the Notice of Intent issued by the Florida Department of Commerce notifying the City that the Comprehensive Plan amendment is complete. If timely challenged, this amendment shall become effective on the date the Florida Department of Commerce, or the Administration Commission enters a final order determining this adopted amendment to be in compliance.

PASSAGE UPON FIRST READING

The foregoing Ordinance was moved for passage upon first reading this ____ day of _____, 2024 by Council Member _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor Joel Tyson	_____
Council Member Fernando R. Herrera	_____
Council Member Inocencia Hernandez	_____
Council Member Gerry Renick	_____
Council Member Jessica Salgado	_____

ATTEST:

Maria Suarez-Sanchez, City Clerk

ADOPTION

The foregoing Ordinance was moved for adoption by Council Member _____ . The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor Joel Tyson	_____
Council Member Fernando R. Herrera	_____
Council Member Inocencia Hernandez	_____
Council Member Gerry Renick	_____
Council Member Jessica Salgado	_____

The Mayor thereupon declared this Ordinance fully passed and adopted this _____ day of _____, 2024.

CITY OF FELLSMERE, FLORIDA

Joel Tyson, Mayor

ATTEST:

Maria Suarez-Sanchez, City Clerk

I HEREBY CERTIFY that Notice of the public hearings on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the ____ day of _____, 2024, and the first reading was held on the ____ day of _____, 2024, and that the first public hearing was held on the ____ day of _____, 2024, and that the second and final reading and public hearing was held on the ____ day of _____, 2024.

Maria Suarez-Sanchez, City Clerk

EXHIBIT "A"
TO
ORDINANCE NO. 2024-01

Comprehensive Plan Text Amendment

12.18.22

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**OBJECTIVE FLUE B-4, FELLSMERE PRESERVE, LLC
ORDINANCE NO. 07-07, (AMENDED BY
ORDINANCE NO. 2024-01, ADOPTED ON
_____, 2024)**

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The amendment to the Comprehensive Plan Future Land Use Maps as requested by Fellsmere 392-Preserve LLC is subject to compliance with the following conditions and requirements, which shall run with the land.

1. The density of the residential development on the above-described land shall not exceed 1.857 dwelling units per acre and such development shall be limited to the lands designated as Low Density Mixed Use Neighborhood (LDMXN) on the Future Land Use maps. All density may be transferred from lands placed in conservation easements in support of St. Johns River Water Management district permitting to other LDMXN portions of the site described in Exhibit "A" attached hereto. The commercial activity shall be limited to the land described in Exhibit "C" attached hereto.

2. Upon receipt of all environmental permits from the St. John's River Water Management District, Corps of Engineers, Fish and Wildlife Commission, and Department of Environmental Protection, the lands determined by those agencies to be under jurisdictional governance shall automatically be placed under a conservation easement as defined within the City's Comprehensive Plan.

3. A 100-foot buffer shall separate the Indian River County Gun Range from any publicly used or accessible areas and be no less than 1000' from any habitable structure.

4. Existing vegetation shall be left to provide a natural noise buffer between the project and gun range.

5. Enhanced buffers shall be used when placing development near the Indian River County Industrial lands to the East, which may include additional space or additional vegetative materials. This shall be at the discretion of the City when reviewing development plans based upon the topography and other environmental features.

6. The development will incorporate Green Building (LEED) buildings and site standards. The developer will, to the extent feasible and as determined by the developer, incorporate Green Building (LEED) buildings and site standards. However, the incorporation of Green Building (LEED) buildings and Site Standards shall not be a requirement of the development, to the extent feasible.

7. The owner/developer shall demonstrate prior to site plan approval that all concurrency provisions have been addressed or met including but not limited to: sanitary sewer, solid waste, drainage, potable water, parks and recreation, and transportation facilities, including mass transit, where applicable.

12.18.22

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8. The development shall work with Indian River County and the City to provide a location for a transit stop; shall include internal pedestrian and bicycle paths; and provide connectivity between the residential and commercial portions of the development.

9. To the extent approved by the State, the development shall be accessible to the St. Sebastian River Preserve State Park.

10. The City and the owner/developer will work closely with the County's Economic Development personnel to recruit commercial or other development desired by Indian River County.

11. Architectural and site design standards shall provide for a uniform theme or character of the development, with a mix of styles and range of prices to assure access by various income groups.

12. Deed restrictions for residential development shall include disclosure of the St. Sebastian River Preserve State Park's conduct of proscribed burns and the existence of the gun range to the East.

Commented [NF1]: Deeds with Mark

EXHIBIT "B"
TO
ORDINANCE NO. 2024-01

Comprehensive Plan Future Land Use Maps Amendment

**LEGAL DESCRIPTION:
(BY SURVEYOR)**

A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 21,
TOWNSHIP 31 SOUTH, RANGE 38 EAST. SAID LANDS BEING MORE PARTICULARLY DESCRIBED
AS FOLLOWS:


COMMENCING AT THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF COUNTY
ROAD 512 AND THE EASTERLY LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF
SAID SECTION 21; THENCE ALONG SAID EASTERLY LINE OF THE NORTHWEST 1/4 OF THE
SOUTHWEST 1/4 OF SECTION 21 BEARING NORTH 00°25'19" EAST A DISTANCE OF 300.00
FEET; THENCE LEAVING SAID EASTERLY LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST
1/4 OF SECTION 21 THENCE NORTH 89°34'01" WEST A DISTANCE OF 2161.69 FEET TO THE
POINT OF BEGINNING; THENCE NORTH 89°34'01" WEST A DISTANCE OF 105.86 FEET;
THENCE N 00°27'06" E A DISTANCE OF 350.07 FEET; THENCE S 89°33'21" E A DISTANCE OF
107.75 FEET; THENCE S 00°25'59" W A DISTANCE OF 350.05 FEET TO THE **POINT OF
BEGINNING**.

SAID PROPERTY CONTAINING WITHIN SAID BOUNDS 37,038 SQUARE FEET (0.85 ACRES)
MORE OR LESS.

REAC TO LDMXN
EXHIBIT "B"
PAGE 1 OF 2

JOB No. 20-2095	DESIGNED BY R. KEMERSON
	APPROVED BY R. KEMERSON
SHEET 1 OF 1	SCALE 1"=1000'
	DATE 02/10/2023
FIELD BOOK/PAGES N/A	

SKETCH AND LEGAL DESCRIPTION
PROPOSED ZONING MODIFICATION
CITY OF FELLSMERE

	VELCON ENGINEERING & SURVEYING, LLC
	CERTIFICATE OF AUTHORIZATION NO. LS 8206
	890 NW PEACOCK BLVD., SUITE 8 FORT ST. LUCIE, FLORIDA 34986
	PHONE (772) 879-0477 Web Site www.velconllc.com

LEGEND

AC. = ACRES
 C.R. = COUNTY ROAD
 INT. = INTERSECTION
 O.R.B. = OFFICIAL RECORD BOOK
 P.B. = PLAT BOOK
 PG. = PAGE
 P.O.B. = POINT OF BEGINNING
 R/W = RIGHT OF WAY
 SF. = SQUARE FEET
 RNG. = RANGE
 T.F.C.R.R. = TRANS FLORIDA CENTRAL RAILROAD
 TWP. = TOWNSHIP

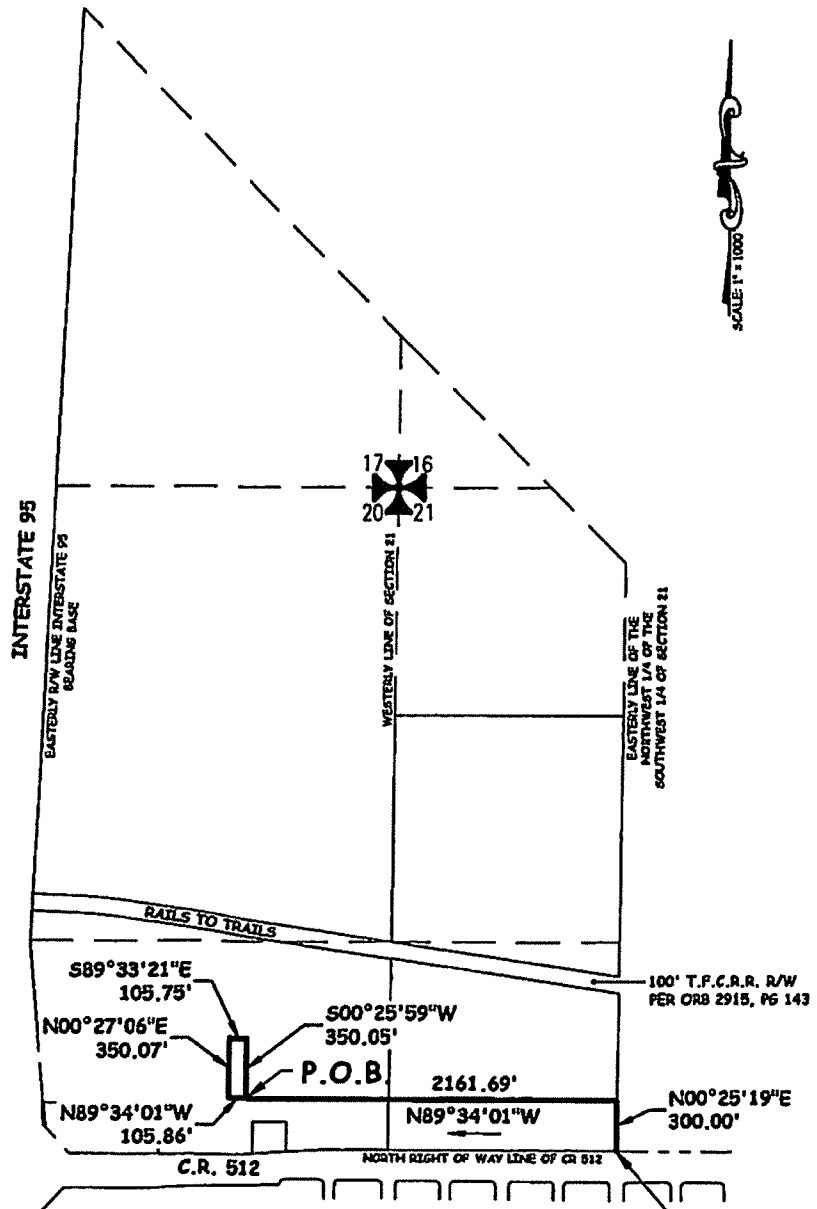


EXHIBIT "B"
 PAGE 2 OF 2

SKETCH OF DESCRIPTION

BEARINGS SHOWN HEREON ARE REFERENCED TO THE EASTERLY R/W LINE OF INTERSTATE 95, AS RECORDED IN OFFICIAL RECORDS BOOK 292, PAGE 29-31, INDIAN RIVER COUNTY, FLORIDA PUBLIC RECORDS.

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

NOT VALID WITHOUT PAGE 1 OF 2

THIS IS NOT A BOUNDARY SURVEY.

REFER TO THE BOUNDARY SURVEY PERFORMED BY CARTER ASSOCIATES, INC., DATED 12/9/2019, PROJECT # 19-375S.

P.O.C.
 INTERSECTION OF NORTH
 R/W LINE C.R. 512
 AND EASTERLY LINE OF THE
 NW 1/4 OF THE SW 1/4 OF
 SECTION 21

ROBERT F. KEMERSON
 PROFESSIONAL SURVEYOR AND MAPPER
 STATE OF FLORIDA # 6285

JOB No.:
 20-2095
 DRAWN BY:
 PS/CW
 APPROVED BY:
 R. KEMERSON
 SCALE:
 1"=1000'
 DATE:
 02/10/2023
 SHEET:
 2 OF 2
 FIELD BOOK/PAGES
 N/A

DATE	REVISIONS

SKETCH AND LEGAL DESCRIPTION
 PROPOSED ZONING MODIFICATION
 CITY OF FELLSMERE



VELCON ENGINEERING
 & SURVEYING, LLC
 CERTIFICATE OF AUTHORIZATION NO. LB 8204
 990 NW PEACOCK BLVD., SUITE 8
 FORT ST. LUCIE, FLORIDA 34986
 PHONE (772) 679-0477
 Web Site: www.velconllc.com

Drawing Notes: 04-082 - Fellsmere 392\Drawings\GMA\Recon\REAC-SKETCH.dwg by gchawry1 on Feb 23, 2007 - 4:31pm

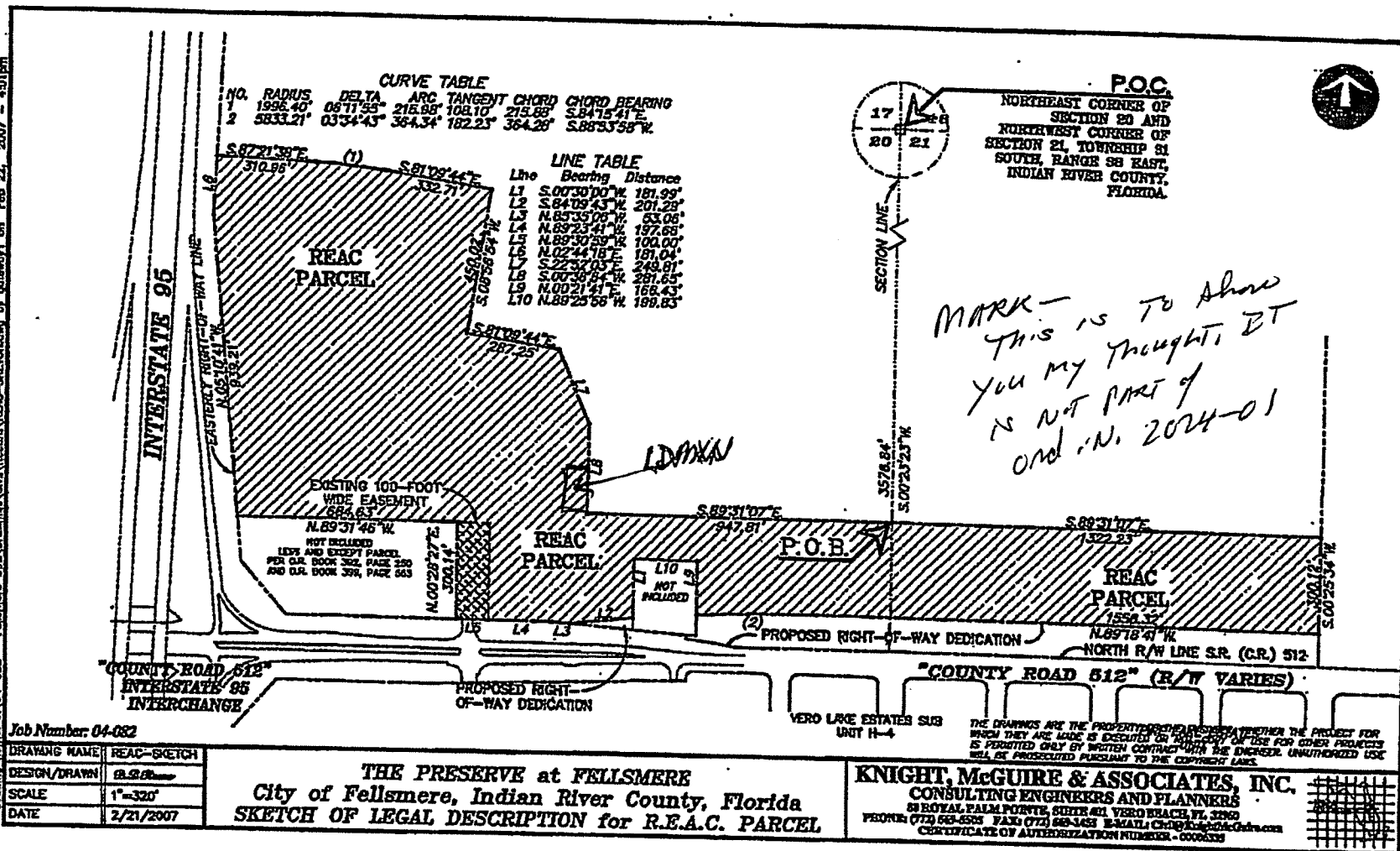


Exhibit "d" to Ordinance NO. 07-07

FIRST ADMENDMENT TO ANNEXATION AGREEMENT

THIS FIRST ADMENDMENT TO ANNEXATION AGREEMENT (hereinafter referred to as "Agreement"), entered into this _____ day of _____, ____ between the City of Fellsmere, Florida, a political subdivision of the State of Florida (hereinafter referred to as "City") and Fellsmere Preserve, LLC, a Florida limited liability company (hereinafter referred to as "Owner/Developer").

RECITALS

WHEREAS, by that certain Trustee's Deed recorded on July 22, 0214 in Official Records Book 2775, Page 270, Public Records of Indian River County, Florida (FCB) REO Real Estate, LLC a Delaware limited liability company, hereinafter "FCB", acquired title to the land from Michael S. Ross, Esq., as Trustee under Trust Agreement dated March 30, 2011 who acquired title from Fellsmere 392, LLC, a Florida limited liability company (who originally acquired title by Personal Representative's Deed dated November 17, 2004 recorded in Official Records Book 1805, Page 936) through a mortgage foreclosure case by Certificate of Title dated May 17, 2012 recorded in Official Records Book 2576, Page 469, all of the Public Records of Indian River County, Florida, which land is described in the survey and legal description attached hereto as Exhibit "A" by this reference made a part hereof (hereinafter the "Land" or "Property"); and

WHEREAS, that the owner acquired title from FCB by Special Warranty Deed dated September 20, 2019, recorded on November 27, 2019 in ORB 3257, Page 2034 of the Public Records of Indian River, County, Florida: and

WHEREAS, Owner/Developer owns property (hereinafter referred to as the "Property") in Indian River County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Owner/Developer desires to develop the property under the City's Planned Development District (PDD) regulations and provide a mix of commercial, diverse residential products, and traditional residential areas (hereinafter referred to as the "Development or Project"); and

WHEREAS, as a part of its plan for amending this Agreement, the Development Agreement, the Comprehensive Plan and Land Development Regulations , the Owner/Developer and City wish to plan for compatibility with the surrounding area and assure the installation of proper public and private facilities and services;

WHEREAS, the City is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The City shall not be required or obligated in any way to pay for, construct or maintain or participate in the construction or maintenance of the improvements required by this Agreement, except for maintenance of improvements dedicated to and accepted by the City. The Owner/Developer, its grantees, successors or assigns in interest or an association and/or assigns satisfactory to the City shall be responsible for the perpetual maintenance of all improvements not dedicated to and accepted the City.
2. Project design details, types and mixes of development, development standards, and architectural and site design features shall be defined within the Preliminary Development/Final Development Plan (hereinafter "PDP/FDP"), which shall govern development of the Property and which shall be consistent with the City's Comprehensive Plan and Land Development Code.
3. Collector roadways within the Project shall be linked to the CR 512 pedestrian/bicycle system by a six (6) foot wide sidewalk on one side of the collector road. Roads interior to the Project shall include as a minimum five (5) foot wide sidewalks on either one or both sides of the road as set forth in the Development Agreement.
4. Owner/Developer shall be required to install or have installed by private providers, where applicable, all private utilities (electric, cable, gas), surface water or storm water management systems, water and wastewater facilities that relate to the overall Development.
5. All utilities shall be underground.
6. Owner/Developer shall contract for solid waste pick-up services to serve the Development.
7. The City desires a mix of styles, types, densities and price ranges of residential dwellings within the Development. In order to achieve this, the Owner/Developer has identified areas or clusters for residential development. The developer should strive to provide a diverse blend of housing styles, sizes and price ranges. Overall density of the Development shall not exceed 1.857 units per acre over the entire LDMXN future land use area in order to achieve a maximum of 652 residential units.
8. The Owner/Developer shall construct both on-site and off-site Potable Water Supply System Facilities per County specifications and determination. The Owner/Developer shall dedicate the utility improvements to the County as requested by the County. Any

line sizing beyond the level required to support the Project shall be constructed by the Owner/Developer with provisions made to allow the Owner/Developer to recover any costs resulting from the upsizing from future developers. As part of the Plat for the first phase of the Development, the Owner/Developer shall dedicate and convey by Warranty Deed to the City a 1.98 acre site as shown on the attached Exhibit "B" for a public dog park and trail head parking area and provide a clean Owner's Policy of Title Insurance to the City.

9. The Owner/Developer shall construct both on-site and off-site Wastewater Collection and Force Main System Facilities per County specifications and determination. The Owner/Developer shall dedicate the utility improvements to the County as requested by the County. Any line sizing beyond the level required to support the Project shall be constructed by the Owner/Developer with provisions made to allow the Owner/Developer to recover any costs resulting from the upsizing from future developers.
10. As part of the wastewater collection and force main system utilities, the Owner/Developer agrees to provide permanent standby emergency generators and radio telemetry units with each sewer pump station constructed by the Owner/Developer to serve the Project.
11. The Owner/Developer acknowledges responsibility to obtain all required Federal, State, County and Local permits as may be applicable to this Project.
12. The Owner/Developer shall assist the City in the design of a CR512 roadway and I-95 interchange streetscape enhancement program to create an aesthetic gateway into the City. The Owner/Developer shall install, irrigate and maintain, at its sole expense, the streetscape enhancements as agreed upon by the parties in the streetscape enhancement program along the entire length of the CR512/I-95 frontage of the Property.
13. The Owner/Developer shall provide approximately _____ acres, or _____ percent (____%) of the total Project area of +/-380.12 acres, for recreation and open space as shown on Exhibit "B". The Owner/Developer shall pay the City of Fellsmere within 30 days of approval of the PDP/FDP the amount of \$185,000 as reimbursement for the design and construction of a pedestrian walkway along the former railroad corridor extending from the west boundary Project to the North County Regional Park owned by Indian River County.
14. All public or private improvements required under the terms of this Agreement or by the City's regulations/codes shall be constructed at the expense of and by the Owner/Developer as approved by the City and completed prior to approval by the City Council of the Final Plat for the first phase of the Development, if the Development is to proceed in phases, or for the whole Development, if the Development is not done in phases. In advance of completion of all improvements, and to allow a Final Plat to be recorded prior to completion of all improvements, the Owner/Developer may provide the City with a Cash Bond, with the funds escrowed with the City or Letter of Credit from a nationally insured bank, both in the amount of 125% of the cost of the improvements that

have not been completed and approved by the City, to guarantee completion of the improvements. The City shall determine (1) what improvements may be deferred from completion prior to any Final Plat being approved, (2) when such improvements must be completed, and (3) the term of the Cash Bond or Letter of Credit. The Cash Bond and Letter of Credit shall be in a form approved by the City Attorney.

15. All roads leading into and throughout the development shall be paved. All internal roadways shall be paved to such standards as required by the City.
16. The deed restrictions and all documents creating a Property Owner's/Homeowners' Association for the entire Development shall be reviewed and approved by the City Attorney for items required by this Agreement, First Amendment to Development Agreement, PDP/FDP or City regulations and shall be recorded along with the first Final Plat at the Owner's/Developer's expense.
17. In the event of a violation of any of the provisions contained in this Agreement, the City shall have the right to refuse to issue any further Building Permits or Certificates of Occupancy as the case may be for the entire Development until such violation(s) is/are corrected and this Agreement may also be enforced by all appropriate Sections of the Code of Ordinances and the Land Development Regulations of the City, as they may be amended, as well as through Code Enforcement action.
18. Owner/Developer shall comply with all regulations and ordinances of the City. In consideration for being annexed into the City and allowed to develop commercial uses and residential use at a density that substantially exceeds the number of units that this Property would be allowed to develop within the unincorporated area of Indian River County, this Agreement constitutes Owner's/Developer's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no "vested rights" against changes to the zoning, the Comprehensive Plan or Land Development Regulations as they may apply to this Property nor may it be relied upon for any "investment backed expectation" as these phrases are used in general, under rules of common law or in Chapter 70, Florida Statute (2023), as amended.
19. Owner/Developer, upon execution of this Agreement, shall pay to the City the cost of recording this Agreement and all related documents in the Indian River County Clerk's Office.
20. Prior to the approval of any Final Plat, the Owner Developer shall construct modifications to the existing traffic signal and left turn and right turn lanes into the Development from County Road 512 at each entrance of the Development and intersection improvements at the main entrance into the Development as required by Indian River County. The design of the improvements shall be approved by the City and County.
21. The Owner/Developer owns land fronting on County Road 512 for this Development, and has dedicated without compensation, land for the ultimate right-of-way for County Road 512 as determined by the City and Indian River County as recorded in O.R. ____ Book, ____ Page.

22. The Owner/Developer shall implement deed restrictions to include:

- a. Each structure (home, clubhouse, commercial building or otherwise) shall consist of "on site" construction; no pre-manufactured structures shall be allowed. Metal buildings are specifically prohibited.
- b. All Single-Family Detached Homes shall be no less than 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, garages, carports and unroofed areas.
- c. All Single Family Attached homes (townhomes) shall equate to an average of 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, garages, carports and unroofed areas.
- d. All Multi-Family (apartment) homes shall equate to an average of 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.
- e. Except for apartment homes, all homes shall have as a minimum a one (1) car garage.
- f. Except for Multi-Family apartment homes, each home shall be responsible for and include construction of the adjacent sidewalk built to specifications identified on the recorded Plat and approved engineering plans, prior to issuance of a Certificate of Occupancy for such home.
- g. A requirement for each property owner to participate in a solid waste pick up service.
- h. All roads within the Development shall be private but open to the public.
- i. The Association shall maintain all streetscape enhancements located along the entire length of the CR 512 frontage of the Property.
- j. The enforcement provisions contained in Section 17.

23. This Annexation of the property was and shall continue to be subject to various provisions contained in Chapter 171 Florida Statutes, Municipal Annexation or Contraction. A portion of the boundary of the Property is contiguous to the City. "Contiguous" is defined in Section 171.031(11) F.S. to mean that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality." Should there be any challenge to the annexation of the Property, the Owner/Developer agrees to assume all risk associated with the challenge and to defend such challenge. The Owner/Developer further agrees to indemnify and hold harmless the City from all claims, suits and judgments in any way arising out of or relating to the annexation of the Property. This indemnity and hold harmless shall extend to all cost, fees and expenses, including but not limited to attorneys' fees incurred by the City in the investigation or defense of any challenge to the annexation at all levels of court and any attorneys' fees that the City may be ordered to pay pursuant to Section 171.081 F.S.

24. This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors or assigns. This Agreement shall run with the Property and be binding

upon any person, firm or corporation who may become the successor in interest directly or indirectly to the Property, and such successor shall be subject to the above referenced conditions as approved by the City Council on Oct 12, 2006 .

25. The terms "dedicate", "dedication" or "convey" as used in this Agreement mean to transfer ownership to the City or other governmental body without any cost to or payment by the City or other governmental body.
26. The violating of any of the conditions, requirements or terms of this Agreement shall constitute a code violation unless a different remedy is specifically provided in any such conditions, requirement or term in which case such different remedy shall supersede this provision. Subject to enforced through the Code Enforcement Special Master.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

INTENTIONALLY LEFT BLANK

ATEST:

CITY OF FELLSMERE, FLORDA

Maria Suarez-Sanchez, City Clerk

Joel Tyson, Mayor

10/19/23

As Approved by the Council on _____

OWNER/DEVELOPER
Fellsmere Preserve, LLC
A Florida limited liability company

By: _____
Vivian Z. Diamond, Manager

By: _____
Christine Pereyra Alvarez, Manager

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by Joel Tyson, Mayor, who is ☐ personally known to me or ☐ has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

10/19/23

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by Vivian Z. Diamond, Manager and Christina Pereyra Alvarez, Manager, who is ☐ personally known to me or ☐ has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF FELLSMERE, FLORIDA
AND
FELLSMERE PRESERVE, LLC**

This First Amendment to Development Agreement, to be effective upon the Effective Date of Ordinance No. _____, between the City of Fellsmere, Florida (the "City") and Fellsmere Preserve, LLC, a Florida limited liability company and its successors or assigns in title or interest (the "Owner").

GENERAL FINDINGS

A: By that certain Trustee's Deed recorded on July 22, 0214 in Official Records Book 2775, Page 270, Public Records of Indian River County, Florida (FCB) REO Real Estate, LLC a Delaware limited liability company, hereinafter "FCB", acquired title to the land from Michael S. Ross, Esq., as Trustee under Trust Agreement dated March 30, 2011 who acquired title from Fellsmere 392, LLC, a Florida limited liability company (who originally acquired title by Personal Representative's Deed dated November 17, 2004 recorded in Official Records Book 1805, Page 936) through a mortgage foreclosure case by Certificate of Title dated May 17, 2012 recorded in Official Records Book 2576, Page 469, all of the Public Records of Indian River County, Florida, which land is described in the survey and legal description attached hereto as Exhibit "A" by this reference made a part hereof (hereinafter the "Land" or "Property")

B: That the owner acquired title from FCB by Special Warranty Deed dated September 20, 2019, recorded on November 27, 2019 in ORB 3257, Page 2034 of the Public Records of Indian River, County, Florida.

C: That the application for this First Amendment To Development Agreement for Fellsmere Preserve LLC was duly and properly filed with the City of Fellsmere as required by the City's Land Development Code.

D: That all fees and costs which are by ordinance and resolution required to be borne and paid by the applicant will be billed by the City to the applicant and timely paid within forty-five (45) days from the date of billing receipt.

E: That the applicant is the Owner of 380.12 acres more or less, (the "Land" or "Property"), situated in the City. The Land is being developed as The Preserve at Fellsmere. This Land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".

F: That the Owner has certified to the City compliance with the "Public Notice" requirements of the City's Land Development Code.

DEVELOPMENT AGREEMENT

Section 1.0 Development Concept. The above General Findings are incorporated herein. The Property shall be developed as a planned development that generally conforms to the Preliminary Development Plan as adopted by Resolution No. 2010-18 amended by Resolution No. 2023-???, the Preliminary/Final Development Plan, Resolution No. 2023-???, the First Amendment To Development Agreement and First Amendment to the Pattern Book. This First Amendment To Development Agreement, the Preliminary Development Plan/Final Development Plan and amended Pattern Book shall govern the development of the Property as a planned development and shall regulate the future use of the Property during their respective existence.

Section 1.1 Preliminary Development Plan/Final Development Plan. The Preliminary Development Plan/Final Development Plan shall consist of the Preliminary Development Plan/Final Development Plan prepared by KMA Engineering & Surveying, LLC dated _____, 2023 and a Pattern Book dated _____, 2023.

Section 1.2 Preliminary/Final Development Plan and Subdivision Approval. Prior to issuance of any permits for construction, including clearing and grading, a Preliminary Development Plan/Final Development Plan and a Subdivision Plat for the initial phase of the project shall be prepared and submitted for review and approved by the City in the manner required by the City's Land Development Code. The overall project may be developed in phases as specified in Section 3.0.

Section 1.3 Performance Guarantees. Performance guarantees for the installation of public improvements will be provided in accordance with the City's Land Development Code.

Section 1.4 Enforcement. In the event of any violation of the provisions contained in this First Amendment To Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and this First Amendment To Development Agreement may be further enforced by all appropriate sections of the Code of Ordinances and Land Development Code of the City, , including, but not limited to, code enforcement action. However, in the event of a violation of paragraph B of the General Findings, regarding payment to the City, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall also have the right to rescind this First Amendment To Development Agreement for nonpayment.

Section 2.0 Unified Ownership. The Applicants or their successors in title shall maintain unified ownership of the Land until approval of a final plat or other legally permissible division of the property dividing or subdividing all or portions of the property. Subsequent owners of the Land or portions of the Land shall be bound by this First Amendment To Development Agreement and the Preliminary Development Plan/Final Development Plan and may request, subject to City Council approval, amendment of this First Amendment To Development Agreement and Preliminary Development Plan/Final Development Plan for that portion of the Land under their ownership without requiring consent of other owners within the project to submit the amendment.

Section 3.0 Phases of Development. The Land shall be developed in phases consistent with the amended Preliminary Development Plan/Final Development Plan. In addition to other conditions imposed within this Development Agreement, the proposed phasing is as follows:

- Phase 1: Lots 1, 2, 3, 4 and 5
 Stormwater Management Areas required to support Phase 1
 Loop Road Behind Lots 1 through 8
 Road Entrances at 106th and 108th Avenues

 Conservation Area Dedication with Warranty Deed (with general public parking area).
- Phase 2: Lots 6, 7, 8, 9, 10 and 11
 Stormwater Management Areas to support Phase 2
 Extension of Loop Road Behind Lot through Lot 14
 Road Entrance at 104th Avenue
- Phase 3: Lots 12, 13 and 14
 Extension of 108th Avenue north to the Rail-Trail right-of-way owned by the City of Fellsmere
 Stormwater Management Areas to support Phase 3
- Phase 4: Townhome Tract
 Stormwater Management Areas to support Phase 4
 Internal Roads, Infrastructure and Entrances
- Phase 5: First Half of Single-Family Home Tract
 Stormwater Management Areas to support Phase 5
 Internal Roads, Infrastructure, and Entrances
 Recreational Amenities
- Phase 5: Second Half of Single-Family Home Tract
 Recreational Amenities

Subsequent development phases will be determined by market conditions and detailed through the subdivision and/or Final Development Plan approval process. The above notwithstanding, the time limits for a Preliminary Development Plan and Final Development Plan shall comply with the requirements in Section 17.15 of the Land Development Code.

Section 4.0 Land Uses Within the PDD. The development of the Land shall be consistent with the uses prescribed herein for each land use area (Commercial/REAC, Commercial/Mixed Use/LDMXN) within the Planned Development District (PDD). The location and size of each land use area is shown on the Preliminary Development Plan. The following land uses are allowed as set forth below. When any of the uses below are contained in Section 5.3 Criteria for Specified Uses, in the Fellsmere Land Development Code the minimum specified standards of Section 5.3 shall apply in addition to standards set forth in this First Amendment to Development Agreement.

a. Commercial/REAC Area: The following land uses are allowed in the area designated as REAC on the Preliminary Development Plan/Final Development Plan.

LAND USE

Administrative/Government Services, including but not limited to Fire Station/EMS Services. (See also personal services or business services)
 Adult Day Care Centers
 Banks/Financial Institutions
 Bars (Eating and Drinking)
 Brewpub
 Business Park/ Flex Space (non-industrial)¹
 Businesses/Professional Offices
 Building Material Sales and Lumberyards ²
 Car wash establishments ¹
 Child care facilities
 Church, convent or parish house
 Clubs and lodges
 Congregate living facilities
 Cultural or Civic Facility/Building or Use; Community Center Building
 Dog Park on City owned land
 Dwellings, single-family, duplex, townhome, apartment home
 Dwellings, accessory for maintenance and security purposes
 Drive-through Facilities (Restaurants, Dry-cleaning, Banks, etc.)
 Dry Cleaning (Pick-up-PU)(Plants-PL)
 Funeral Homes/Mortuary
 Group home facilities
 Hospitals
 Hotels,
 Kennel
 Laboratories (research, medical and dental)
 Medical Dental Clinics

Micro-brewery
 Mini-or Self Service Storage facilities ²
 Motels ³
 Nursing and convalescent homes
 Office
 Outdoor Storage as an accessory ²
 Printing/Graphic Arts
 Project sales facilities ⁴
 Public use
 Public utility service facilities ²
 Recreation, indoor
 Recreation, outdoor ²
 Restaurants (Eating and Drinking establishments)
 Retail
 Schools
 Service, business
 Service, personal
 Studios (Art, Museums, galleries)
 Studios-Radio and TV
 Temporary labor agency
 Vehicle sales and rental ²
 Vehicle minor repair, servicing and maintenance:
 Veterinary clinic

All uses on Lots 1-11 fronting on CR512 in the Commercial/REAC area as shown on the Preliminary Development Plan (PDP)/Final Development Plan (FDP) must be conducted indoors, except outdoor seating for restaurants and car washes related to a principal structure. Outdoor retail sales accessory to a principal use may be permitted by the City.

1- Bays may not be oriented toward CR512

2- use not allowed on Lots 1-11 which front on CR512 in the Commercial/REAC area as shown on the PDP.

3- Access to motel rooms and catwalks shall not face CR512. A maximum of one (1) tier of parking and related driving isle may be provided in front of the building.

4- A temporary use subject to City approval addressing parking, landscaping, building aesthetics and time frame, unless located within a City approved permanent building.

b. Commercial/Mixed Use/LDMXN Area: The following land uses are allowed in the area designated as Commercial/Mixed Use/LDMXN on the Preliminary Development Plan/Final Development Plan:

LAND USE

- 1) All uses allowed in the Commercial/REAC area as listed above, except the following uses which are prohibited:

Electronic assembly
 Industrial

Manufacturing, light
Warehousing and Wholesaling
Wholesaling from sample stocks

- 2) Single-Family Detached, Single-Family Attached, (duplex, townhomes), and Multi-family dwellings. Townhouses and Single-Family Homes are required to have a minimum of a one (1) car garage and are allowed to have all customary accessory uses.
- 3) Community center building serving the residents of single-family or multi-family development.
- 4) Outdoor recreation facilities such as swimming pools, tennis courts and playgrounds.
- 5) Outdoor recreation facilities such as swimming pools, tennis courts and playgrounds serving the residents of Single-Family or Multi-Family Development.

Any amendment to the uses in subsections a. or b. above shall be considered a major amendment to the project.

Section 5.0 Development Standards.

Section 5.1 Project Density and Number of Units: The Preliminary Development Plan/Final Development Plan provides for a maximum of 652 residential units. Residential units shall include single-family and multi-family dwellings. The allocation of units by type may be amended by the Owner based on market conditions and project phasing so long as the total of 652 residential units is not exceeded.

Section 5.2 Project Buffers: The project shall provide a twenty-five (25) foot natural buffer or landscaped buffer along all project boundaries. Buffers within areas designated for preservation/conservation shall not require planting improvements. Unless otherwise noted, project buffers shall meet Type B minimum standards per Section 11.4 D 2 of the City's Land Development Code. Where buffers contain preserved vegetation equal to Type B minimum standards, additional planting is not required. Sidewalks, swales, signage, and lighting will be permitted in the CR512 buffer. The twenty-five (25) foot buffer shall be included within the required building setback. The buffer along 108th Avenue may be met by the provision of landscape buffers on both sides totaling 25' in width so long as no single buffer is less than 10' in width.

Internal buffering will not be required between similar or compatible uses in the development South of the "Old Railroad Grade". Where dis-similar uses occur that would normally require a buffer pursuant to the Fellsmere Land Development Code, such buffer shall be required. The railroad grade will serve as meeting the buffer width requirement between the proposed uses to the south and north. As part of the application for the Final Development Plan for Phase 3, the applicant shall provide a proposed landscape plan for the "Old Railroad Grade." The landscape plan does not have to meet the Type B minimum standards of Section 11.4.D.2 of the City's Land Development Code. In exchange for this reduction in landscape requirements along the "Old Railroad Grade," the applicant for development of all parcels must demonstrate at time of Final Development Plan approval that all service areas are totally screened from the trail within

the “Old Railroad Grade.” Screening may take the form of additional landscaping, walls, berms, or intervening buildings or combination thereof.

Section 5.3 Single Family Detached Dwellings:

Minimum lot size: 5000 square feet

Minimum lot width: 50 feet

Minimum Required yard size:

Front: 20 feet (10' for side entry garages)

Side: 5 feet

Rear: 10 feet

Corner: 15 feet

Lots providing lot widths over 60 feet to less than 75 feet shall provide a 7.5 foot side yard setback, and lot widths of 75 feet and above shall provide a 10 foot side yard setback.

Accessory uses may be placed within five (5) feet of the rear or side property lines.

Eaves may extend into required yards up to 3.0 feet.

Minimum Floor Area: 1,200 square feet

Maximum building coverage: 60 percent

Maximum impervious lot coverage: 70 percent

Minimum Open Space: 25 percent

Maximum building height: 35 feet

20 feet for accessory uses.

Minimum one (1) car garage. For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.4 Single-Family Attached Dwellings - Townhouse

Unit Requirements

Minimum lot size: 1,200 square feet

Maximum building height: 45 feet

20 feet for accessory uses

Building and Project Requirements

Minimum Project Size: None

Maximum Project Density: None

Maximum Number of Units per Building: 12 units

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Length: 200 feet

Maximum Building Height: 35 feet

Minimum one (1) car garage. For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.5 Multi-Family Dwellings

Building and Parcel Requirements

Minimum Parcel Size: None

Maximum Project Density: None

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Length: 300 feet

Maximum Building Height: 35 feet except 50 feet for Lot 11 subject to Section 3.21.H.1.m of the City of Fellsmere Land Development Code.

Surface parking shall be allowed for all multifamily dwellings (garden-style apartments, low-rise multi-family, etc.) so long as the owner/developer provides adequate parking as per the City of Fellsmere Land Development Code. One (1) car garages and structured parking garages shall not be required.

Section 5.6 Commercial (Non-Residential) and Mixed Use Buildings:

Building and Parcel Requirements

Minimum Parcel Size: 0.50 acres

Minimum lot width: 125 feet

Minimum required building setbacks:

Front: 25 feet

Side: 15 feet

Rear: 25 feet

Maximum Lot Coverage: 80 percent

Maximum Building Height: 35 feet for all Commercial Lots except 65 feet for Commercial Lots 12, 13 and 14 as illustrated on the Preliminary Development Plan.

Maximum Building Length: 500 feet

Maximum Floor Area Ratio: 0.5 Average for all building parcels combined

Setback from CR512: Maximum front setback for buildings fronting on CR512 shall be 25 feet plus no more than the depth of one (1) parking drive aisle with parking on both sides.

Hotel/Motel Density:

Maximum density shall be 60 units per acre based on the total gross lot area plus the pro-rata share of the common elements and areas for the non-residential/mixed use portion of the project. Minimum room size shall be 300 square feet.

Building Appearance and Design:

All buildings within the entire Property shall comply with the building design standards presented in the approved project Pattern Book adopted by Resolution No. 2010-18 and revised by Resolution No. _____ of the City Council. Building elevations with materials and colors (4-sided) shall be submitted for City Council approval with the Final Development Plan application for the pertinent phase. Compliance with the Pattern Book shall be determined solely by the City Council as part of the approval of the final site plan. The City Council may impose more requirements than that required by the Pattern Book upon finding that it will improve the general safety, welfare, health, appearance, or aesthetics and is in conformance with the Comprehensive Plan and this Code. The City shall have the right to evaluate the physical layout, architectural characteristics and amenities of the planned development to require changes or modifications in design to create compatibility and conformity in the variety of uses within the project to insure, protect and promote the health, safety and general welfare of the property owners of the planned development and the residents of the City.

Off-Street Parking and Loading Requirements:

All off-street parking shall comply with the off-street parking regulations as set forth in Section 7.2 of the Fellsmere Land Development Code. Off-street loading shall comply with Section 7.3 of the Fellsmere Land Development Code.

Section 5.8 Amendment

All amendments to the Preliminary Development Plan/Final Development Plan, other than those deemed by the Fellsmere City Manager or designee to be minor amendments as set out herein shall be considered major and require the review and recommendation of the Fellsmere Planning and Zoning Commission and action by the Fellsmere City Council in the same manner as this First Amendment To Development Agreement was adopted. Minor amendments are changes to the Preliminary Development Plan/Final Development Plan that result from the application of more specific site data or design criteria but do not result in material revisions to the Preliminary Development Plan/Final Development Plan by affecting the conceptual layout and content. Minor amendments include but are not limited to (the following list is intended to provide examples of minor amendments):

- a. Relocation of internal primary and secondary access points to meet standard engineering design criteria, avoid unsuitable soils or properly align access points..
- b. Relocation of the internal roads and driveways to comply with standard design criteria, conform to final lot and building layouts and avoid tree or wetland areas.
- c. Reduction of five (5) percent or less to the size or boundaries of the areas allocated to recreational use.

- d. Modification of the boundaries of storm water retention areas, tree protection areas and wetland areas and buffers, which do not fall below minimum standards, based on specific field information or conditions resulting from non-local permits.
- e. Decrease in overall project density.

Any requested amendment to the permitted land uses in Section 4.0 or dimensional standards for the development is a major amendment to the project.

Any requested amendment to Development Standards in Sections 5.1 through 5.7 is a major amendment to the project.

Section 5.9 Project Signage

Signs shall comply with the provisions of Article 10, Land Development Code of the City of Fellsmere. The project shall be permitted interstate signs up to fifty (50) feet in height (measured from I-95) provided the provisions of Division 3, Section 10.12, Chapter 10, Fellsmere Land Development Code pertaining to interstate signs are met.

Section 5.10 Common Open Space: Based on the project conservation area of _____ acres, the existing railroad right-of-way known as the “Old Railroad Grade” previously deeded to the City, the pedestrian and bicycle trails and facilities to be constructed by the Owner leading to and within the conservation area for public use, installation of landscaping within the rail trail right-of-way, and provision of recreation amenities within each residential phase, the project will comply with all City recreation requirements. Lakes on the Property may be used for recreation activities consistent with the applicable environmental permits. The Old Railroad Grade, conservation area and all pedestrian hiking and bicycle trails, as the parcels are shown on the Preliminary Development Plan or future Final Development Plans, shall be open to the general public except for those trails specifically designated as private as part of the Final Development Plan approval. The Old Railroad Grade within or adjacent to the boundaries of the Property, hiking and bicycle trails (including landscaping but excepting the rail trail within the Old Railroad Grade), conservation area and project lakes within the Property shall be maintained by a property owners association(s) (POA) to be created by the Owner.

Section 5.11 Waivers. The Owner has requested a waiver of certain design features for the project. The following design provisions contained in the Land Development Code as set forth below are waived to the extent as amended:

<u>Existing provision to be waived</u>	<u>Provision as amended to be complied with</u>
1. Section 3.21 H.1. Front building setback of 50 feet from County right of way	25 foot front building setback from County right of way (CR512)
2. Section 3.21 H.1. Building	Building length not more than 500 feet

Length 400 feet

- | | |
|---|---|
| 3. Section 3.21 H.1.g. parking plan required with Preliminary Development Plan | Provide parking plan at final development plan |
| 4. Section 3.21 H. 1. i. Buffer Yard requirement of 25 feet Type "B" | 25 foot Buffer Yard Requirement setback along conservation area however, no planting required
No Buffer along East boundary
No Buffer at CR512 outparcel |
| 5. Section 3.21 H. 1. J. Internal Buffer where commercial abuts residential and industrial abuts commercial | Internal Buffer is not required where industrial uses in REAC area abut commercial uses on Parcel 12, 13 and/or 14 as located on the approved Preliminary Development Plan/Final Development Plan |
| 6. Section 11.2 B
General landscape plans and conceptual building elevations | Provide complete landscape plans and building elevation at Final Development Plan |

Section 6.0 Environmental Considerations. In the designated conservation area the Owner shall preserve native wetlands and uplands systems on site through a conservation easement which will prohibit any development in the native wetlands and uplands, as well as in the wetland buffer (except for recreational amenities). The conservation area and easement shall be subject to approval by the St. Johns River Water Management District and the City. Areas designated on the Preliminary Development Plan for conservation and preservation shall be open to the general public between dawn and dusk for recreational activities uses, provided such activities are consistent with the preservation of the wetlands, including hiking, walking and bicycle trails, picnic facilities, horseback riding and similar low impact active and passive recreation, as allowed by applicable environmental permits. Improvements necessary for public use of the conservation and preservation area as set forth herein shall be constructed at the Owner's expense; however, the Owner shall not be required to provide public restrooms or other public buildings. A preserve management plan will be provided with the first phase of development and shall include:

- Provisions for the management of conservation lands consistent with the requirements of the applicable permitting agencies
- Location of public access points including public parking areas

- Permitted recreational uses consistent with the requirements of the applicable permitting agencies
- Clearly specified maintenance responsibilities by the association (POA)
- Provision for other management activities as necessary

Section 7.0 Utility Services. Public utilities consisting of water and wastewater for the Property shall be obtained from the Indian River County and shall be applied for, built, and conveyed in accordance with the County's rules, regulations, requirements, tariffs, policies, and agreements prevailing at the time of Owner's application for service.

The Owner shall provide permanent standby emergency generators and radio telemetry units with each sewer pump station constructed by the Owner to serve the project.

The Owner shall construct all wastewater and water lines required to serve the project. For all private streets, the Owner will provide the County with utility easements granting the County access to maintain utility lines dedicated to the County. Water meters used within the project shall provide for electronic reading if required by Indian River County.

The City and/or County may require oversize lines for additional anticipated development. If oversize lines are required, the Owner shall be entitled to cost recovery for the additional cost beyond the cost required to service the Owner's project. The cost recovery shall be based upon the actual cost of installation and shall be paid to the City by future development based on its proportionate share of the recoverable cost. Upon receipt of funds from a third-party user, the City shall promptly reimburse the recovered cost to the Owner.

Other utilities not provided by the City shall be built in accordance with and consistent with the City's requirements. Electric, gas, telephone, cable televisions and like utilities shall be installed underground.

Section 8.0 Stormwater Drainage. Provision for storm water retention shall be in accordance with the requirements of the City of Fellsmere Land Development Code and St. John's River Water Management District requirements. Applicant shall ensure positive flow from point of discharge along the Old Railroad Grade to waters of the State.

Section 9.0 Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the City of Fellsmere Comprehensive Plan and Land Development Code. In addition to any on-site improvements, the Owner shall provide the following off-site improvements as conditions:

Section 9.1 CR 512 Aesthetic Improvements: Prior to the Certificate of Completion of Site Infrastructure for Phase 3, the Owner will design, install,

maintain and pay for right-of-way improvements in the form of enhanced landscaping, sidewalk and landscape lighting, signage, sidewalks and other aesthetic features along the northern edge and center island of CR 512 in accordance with the Annexation Agreement between the City and the Owner.

Section 9.2 CR 512 Road Improvements: Prior to the Certificate of Completion of the Site Infrastructure for Phase 2, the Owner will design, install, construct and pay for right-of-way improvements in the form of widening CR512 from two to four lanes from the current terminus of the four lane section west of I-95 to the western limits of the Sebastian Preserve State Park.

Section 9.3 104th and 108th Avenue Signals: Prior to the first Certificate of Occupancy for any Phase, the Owner will pay Indian River County the cost of modifying the traffic signal at any impacted access intersection with CR 512 along with any turn lane modifications, if required by Indian River County.

Prior to the first Certificate of Occupancy for Phase 2, the Owner will pay Indian River County the cost of signalizing 104th Avenue at its intersection with CR 512, the remaining, undeveloped traffic signal as provided in the Joint Agreement to Construct Improvements on Indian River Road 512 dated August 12, 2008 ("Joint Agreement").

Section 9.5 Bicycle and Pedestrian Facilities: The Owner will provide the following bicycle and pedestrian facilities:

9.4.1: The Owner will provide the following in relation to the rail trail prior to Certification of Completion of Site Infrastructure for Phase 3, 4, or 5, unless otherwise set forth below:

- a. Design, install, and maintain an eight (8') wide path from the terminus of 108th Avenue running north across the Old Railroad Grade and to the existing southern lake within the Conservation Area with said trail having structural ability to handle maintenance vehicles accessing the Conservation Area from 108th Avenue;
- b. Trailhead structure (minimum of 100sf) with seating and sign board at the end of 108th Avenue within the Rail Trail right-of-way;
- c. Landscaping in the form of canopy trees at 50' on center along both edges of the trail adjacent to the Project boundaries;
- d. Within 30 days of approval of the Preliminary Development Plan, pay to the City of Fellsmere the amount of \$185,000 to meet the obligation in the Annexation Agreement in regard to the requirement to design and construct the pedestrian walkway along the old Railroad Grade Right of Way.

9.4.2: The Owner shall construct a six (6) foot wide bikeway/sidewalk along one side of the central collector roads within the Property when such collector roads are constructed.

9.4.3: The Owner shall construct five (5) foot wide sidewalks along one side of all other roads within the Property when such other roads are constructed, unless otherwise set forth herein.

Section 9.5 Internal Roads: All roads leading into and throughout the development shall be paved and designed as minimum 50-foot wide rights-of-way with curb and gutter to meet the City standards as set forth in Section 7.19 of the Fellsmere Land Development Code. All roads within the development shall be private but opened to the public. Internal residential access roads may be access controlled.

Section 10.0 Other Development Conditions: The Owner shall implement deed restrictions subject to approval of the City Attorney to include:

- a. Each structure shall consist of “on-site” construction; no pre-manufactured structures shall be allowed, unless allowed by the City pursuant to standards set out in the Pattern Book. Metal buildings are specifically prohibited except as accessory uses for residential units.
- a. All single-family homes shall be no less than 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.
- b. All single-family homes shall have as a minimum an attached one car garage.
- c. Each single-family home shall be responsible for and include construction of the adjacent sidewalk built to City specifications on the recorded Plat prior to the issuance of a Certificate of Occupancy for such single-family home.
- d. Each property owner shall participate in a solid waste pick-up service.
- e. All roads within the development shall be private and maintained by an incorporated property owner’s association(s).
- f. The property owner’s association described in Section 11.0 shall maintain the streetscape enhancements along the CR 512 frontage and Interchange 95 Northeast quadrant of the Property.
- g. In the event of any violation of the provisions contained in the First Amendment To Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building

permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and the First Amendment To Development Agreement may be further enforced by all appropriate sections of the Code of Ordinances and Land Development Code of the City, , including, but not limited to, code enforcement action.

Section 11.0 Building or Property Owners Association. The Owner shall create an incorporated property owner's association (POA) or associations for the purpose of maintaining, repairing and replacing improvements conveyed to the property owners association or associations; enforce covenants and restrictions; and assure continued compliance with covenants and restrictions imposed by the various permitting agencies, including but not limited to, the City of Fellsmere, Indian River County, St. Johns River Water Management District, the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and the Florida Department of Environmental Protection. The deed restrictions and documents creating a property owner's/home owner's association for the entire project shall be reviewed and approved by the City Attorney for items required by this First Amendment To Development Agreement, Annexation Agreement and City regulations, and shall be recorded along with the first Final Development Plan or Final Plat at the Owner's/ expense.

Section 12.0 Development Regulations. The Fellsmere Comprehensive Plan and Land Development Code will control regarding any items not specifically covered by this First Amendment To Development Agreement.

Section 13.0 Local Development Permits Obtained by Owner. All local Development Permits shall be obtained at the sole cost of the Owner and, that in the event that any such local Development Permits are not received, no further development of the Property shall be allowed until such time as the City Council of the City of Fellsmere has reviewed the matter and determined whether or not to terminate this First Amendment To Development Agreement, or to modify it in a manner consistent with the public interest and the City of Fellsmere Comprehensive Plan.

Section 14.0 Compliance with laws not identified in First Amendment To Development Agreement. The failure of this First Amendment To Development Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions, and that any matter or thing required to be done under existing ordinances of the City of Fellsmere shall not be otherwise amended, modified or waived unless such modification, amendment or waiver is expressly provided for in this First Amendment To Development Agreement with specific reference to the code provisions so waived, modified or amended.

Section 15.0 Expiration: This First Amendment To Development Agreement shall be valid for ten (10) years from the date of execution. This First Amendment To Development Agreement may be extended by mutual consent of the City Council and the Owner, subject to two (2) public hearings. The term of any one (1) extension shall not

exceed five (5) years. This First Amendment To Development Agreement shall run with the land and shall bind all parties hereto and inure to the benefit and burden of all parties hereto as successors in title or interest. The above notwithstanding, when a phase of the development as set forth in Section 3.0 above is completed and totally built out this First Amendment To Development Agreement and the Pattern Book shall control all future activities within the completed phase.

Section 16.0 Applicability. This First Amendment To Development Agreement shall be subject to all provisions contained in Section 17.22 Development Agreements of the City's Land Development Code.

APPROVED by Resolution No. 2023-_____ of the City Council of the City of Fellsmere, Florida, on the _____ day of _____, 2023.

INTENTIONALLY LEFT BLANK

ATEST:

CITY OF FELLSMERE, FLORIDA

Maria Suarez-Sanchez, City Clerk

Joel Tyson, Mayor
As Approved by the Council on _____

OWNER/DEVELOPER
Fellsmere Preserve, LLC
A Florida limited liability company

By:_____

Vivian Z. Diamond, Manager

By: _____
Christine Pereyra Alvarez, Manager

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by Joel Tyson, Mayor, who is ☐ personally known to me or ☐ has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by Vivian Z. Diamond, Manager and Christina Pereyra Alvarez, Manager, who is ☐ personally known to me or ☐ has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

**MORTGAGEE'S CONSENT
TO
FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

THE UNDERSIGNED, being the holder of a Mortgage and Security Agreement recorded on November 27, 2019 in Official Record Book 3257, Page 2037, Public Records of Indian River County, Florida, upon the following described real property to wit:

See Exhibit "A" attached hereto

(herein referred to as the "Real Property")

does hereby join in and consent to the Real Property being subject to this First Amendment to Development Agreement for The Fellsmere Preserve and agrees that its Mortgage and Security Agreement shall be subordinated to this First Amendment to Development Agreement.

IN WITNESS WHEREOF, the undersigned has caused this consent to be signed by Luis O. Dominguez and Maritza Dominguez this ____ day of _____, 2023.

WITNESSES:
AS TO BOTH:

MORTGAGEE

Print Name: _____

Luis O. Dominguez

Print Name: _____

Maritza Dominguez

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2023, by Luis O. Dominguez and Maritza Dominguez, who is ☐ personally known to me or ☐ has produced an _____ as identification.

"SEAL"

Notary Public, State of _____

**MORTGAGEE'S CONSENT
TO
FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

THE UNDERSIGNED, being the holder of a Mortgage, Fixture Filing, Assignment of Leases and Rents and Security Agreement (the "Mortgage") recorded on December 16, 2021 in Official Record Book 3493, Page 1288, Public Records of Indian River County, Florida, and a UCC Financing Statement recorded on December 16, 2021 in Official Record Book 3493, Page 1285, Public Records of Indian River County, Florida, upon the following described real property to wit:

See Exhibit "A" attached hereto

(herein referred to as the "Real Property")

does hereby join in and consent to the Real Property being subject to this First Amendment To Development Agreement for The Fellsmere Preserve and agrees that its Mortgage and UCC Financing statement shall be subordinated to this First Amendment To Development Agreement.

IN WITNESS WHEREOF, the undersigned has caused this consent to be signed by Vivian Z. Diamond and Christina Pereyra Alvarez, its authorized agents, and its seal to be affixed this _____ day of _____, 2023.

WITNESSES:

LENDER/MORTGAGEE
CMV ASSET 3 QM 2015, LLC, a
Florida limited liability company

Print Name: _____

By: _____
Vivian Z. Diamond, Manager

Print Name: _____

By: _____
Christina Pereyra Alvarez, Manager

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by Vivian Z. Diamond, Manager and Christina Pereyra Alvarez, Manager, who is ☐ personally known to me or ☐ has produced an _____ as identification.

"SEAL"

Notary Public, State of _____

**ASSIGNEE/MORTGAGEE'S CONSENT
TO
FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

THE UNDERSIGNED, being the holder of an Assignment of Note, Mortgage, Loan Documents and Collateral Documents, Amended and Restated Collateral Assignment of Notes, Mortgages and Security Documents and Amended and Restated Collateral Assignment of Notes, Mortgages and Security Documents recorded respectively on December 16, 2021 in Official Record Book 3493, Page 1454, Official Record Book 3493, Page 1458, and on October 4, 2022 in Official Record Book 3574, Page 1734, all of Public Records of Indian River County, Florida, collectively referred to hereinafter as "Loan Documents" upon the following described real property to wit:

See Exhibit "A" attached hereto

(herein referred to as the "Real Property")

does hereby join in and consent to the Real Property being subject to this First Amendment To Development Agreement for The Fellsmere Preserve and agrees that the Loan Documents as assigned shall be subordinated to this First Amendment To Development Agreement.

IN WITNESS WHEREOF, the undersigned, has caused this consent to be signed by _____, its Authorized Agent, and its seal to be affixed this ____ day of _____, 2023.

WITNESSES:

ASSIGNEE/LOAN DOCUMENTS
Synovus Bank, as Successor by Manager with
Florida Community Bank, Assignee

Print Name: _____

By: _____
Print Name: _____
Its: _____

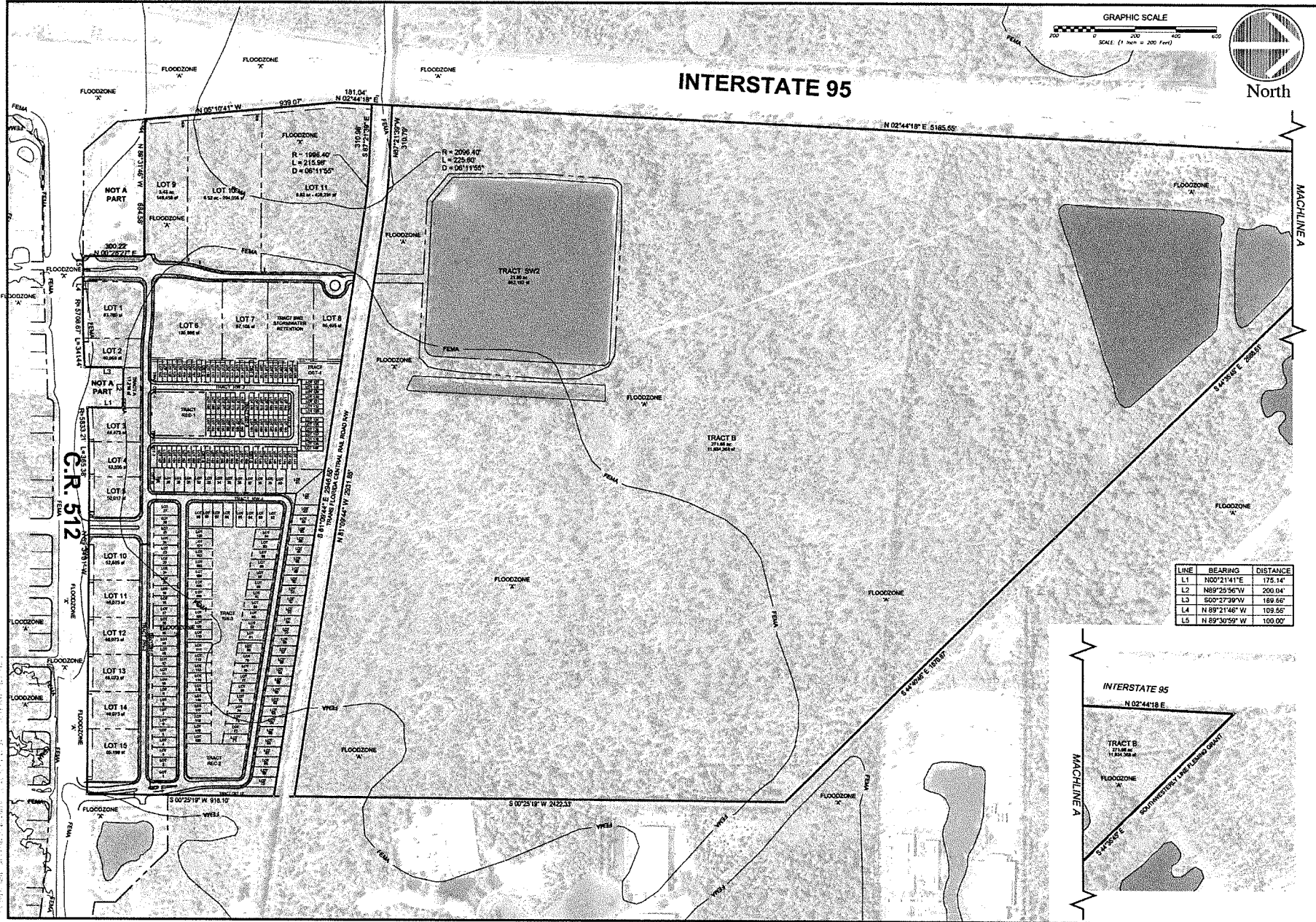
Print Name: _____

STATE OF _____
COUNTY OF _____

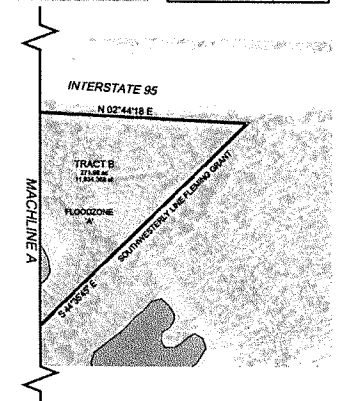
The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2023, on behalf of Synovus Bank, a national banking association, who is ☐ personally known to me or ☐ has produced an _____ as identification.

"SEAL"

Notary Public, State of _____



LINE	BEARING	DISTANCE
L1	N00°21'41"E	175.14'
L2	N89°29'56"W	200.04'
L3	S00°27'39"W	169.66'
L4	N89°21'46"W	109.55'
L5	N89°30'59"W	100.00'



KMA
ENGINEERING & SURVEYING, LLC
200 N. W. 10th Ave., Suite 100
Fort Lauderdale, FL 33304
Phone: (954) 571-1111
Fax: (954) 571-1112
www.kma-survey.com

REVISIONS

NO.	DATE	BY	DESCRIPTION
1	5/2/21	KMS	ISSUED FOR PERMIT
2	5/2/21	KMS	ISSUED FOR PERMIT

NOT FOR CONSTRUCTION

PROJECT:
THE PRESERVE AT FELLSMERE
CITY OF FELLSMERE, FLORIDA

CLIENT:
FELLSMERE PRESERVE LLC
CORAL GABLES, FLORIDA 33146

GLANE BERGSTRESSER, P.E.
FLORIDA LICENSE NO. 84588
05/22/2023

811
KNOW WHAT'S BELOW
ALWAYS CALL 811
BEFORE YOU DIG
www.811fla.com

PROJECT NO.: 20-1021
CREATED BY: CPM
CHECKED BY: BRS
DATE: 05/21/2021
CAO D.: 05/21/2021

SHEET TITLE:
Project Aerial Overlay

SHEET NUMBER:
01b

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: January 4, 2024

Agenda Item No. 12(k)

☐ PUBLIC HEARING
☐ Ordinance on Second Reading
☐ Public Hearing

☐ RESOLUTION

☐ DISCUSSION

☐ ORDINANCE ON FIRST READING

☐ BID/RFP AWARD


☒ GENERAL APPROVAL OF ITEM

☐ CONSENT AGENDA

☐ Other:

SUBJECT: Professional Services Agreement with A Walk in the Past Productions, LLC, and Applied Webology FL, LLC (hereinafter jointly referred to as "WPPAW") for services related to the Historic Fellsmere Walking Tour.

RECOMMENDED MOTION/ACTION: Approve Professional Services Agreement with WPPAW

Approved by City Manager  Date: 12.29.23

Originating Department: Grants	Costs: \$ 50,000 Funding Source: Grant	Attachments: Professional Services Agreement
Department Review: <input checked="" type="checkbox"/> City Attorney Warren Dill <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> Utility _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>X</u> Please initial one.

Submittal information: Council meets on the first and third Thursdays of each month. Agenda submittal deadline to the City Clerk is 5:00 p.m. of the last and second Thursday of each month. Therefore, the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

The City of Fellsmere has been awarded \$50,000 in grant funds with no match from the State of Florida Division of Historical Resources Small Matching Grant program for the creation of an historical walking tour of Fellsmere, including the Broadway Corridor area.

On November 7, 2023, Council approved awarding the Historical Walking Tour RFP to WPPAW. This item is to approve an agreement to allow WPPAW to provide preparation of a walking tour map, development of a walking tour mobile app and website, and the printing of five thousand (5,000) brochures.

WPPAW is not under a master contract with the City, so the proposed Professional Services Agreement is attached hereto for approval.

**PROFESSIONAL SERVICES AGREEMENT FOR
FELLSMERE HISTORIC DISTRICT WALKING TOUR**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into as of the date the last party executed this Agreement by and between the City of Fellsmere, Florida, a Florida municipal corporation with a mailing address of 22 South Orange Street, Fellsmere, Florida 32948 (hereinafter "City"), and A Walk in the Past Productions, LLC, a Florida limited liability company with a principal address of 8405 75th Court, Vero Beach, FL 32967 (hereinafter "A Walk in the Past") and Applied Webology FL, LLC, a Florida limited liability company with a principal address of 201 Stony Point Drive, Sebastian, FL 32958 (hereinafter "Applied Webology"). A Walk in the Past and Applied Webology are at times jointly referred to herein as "WPPAW." The City and WPPAW are at times referred to herein individually as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, the City is the recipient of a Small Matching Grant (Grant No. 24.h.sm.300.025) awarded and administered by the Florida Department of State, Division of Historical Resources in the amount of \$50,000.00 for the project known as the "Fellsmere Historic District Walking Tour;" and

WHEREAS, on June 15, 2023, City Council authorized City staff to issue a request for proposals (RFP) for the creation and development of the Fellsmere Historic District Walking Tour, including, but not limited to, the preparation of a walking tour map, development of a walking tour mobile app and website, and the printing of five thousand (5,000) brochures; and

WHEREAS, in response to the RFP, the City received a proposal from WPPAW to provide such services and materials, which the Florida Department of State, Division of Historical Resources has deemed acceptable provided the City determines that A Walk in the Past and Applied Webology are qualified to provide such services and materials; and

WHEREAS, on December 7, 2023, City Council, after having reviewed the proposal submitted by WPPAW and examining the qualifications of WPPAW, determined that WPPAW is qualified to perform the services contemplated in the RFP and selecting WPPAW's proposal was in the best interests of the City; and

WHEREAS, the City desires to enter into an agreement with WPPAW upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1. Recitations. The foregoing "WHEREAS" clauses are hereby adopted and incorporated herein.

Section 2. Scope of Services. WPPAW shall create and develop a Fellsmere Historic District Walking Tour with a printed map, an interactive web-based application to support the tour, and a webpage addressing historic preservation and providing a virtual walking tour within said webpage. The services will require close and frequent coordination and liaison with the City.

The City will provide research materials compiled for the resources located within the Historic District. The app will coincide with a hard copy walking tour map outlining tour destinations.

A. User Interface Development

- The app and webpage must provide accessibility in compliance with current ADA laws and regulations.
- The app must be responsive and meet the needs of various screen sizes, devices, and data capabilities.
- An engaging design must easily integrate maps with images, videos, audio files, text descriptions, etc.
- The app must encourage users to spend a reasonably significant amount of time at each stop.

B. Web-Based App Scope of Work. The City branded web-based app shall use current technologies. The app must be simple to use (e.g., open the app, determine location, begin the tour, and use mapping features and links to allow for information to be accessed).

C. Webpage and Virtual Walking Tour Scope of Services. The City's Historic Preservation webpage shall use the City's current web provider. The webpage shall contain a narrative of Fellsmere's founding and evolution to today. The virtual walking tour, to be located on the Historic Preservation webpage, must be simple to use (e.g., open the link, begin the tour, and use mapping features and links to allow for information to be accessed).

D. Hosting and Maintenance Services. Applied Webology shall provide four (4) years of hosting and ADA compliance upkeep for the website, and four (4) years of mobile app design changes and hosting.

Section 3. Project Schedule. WPPAW shall provide the following services and materials in accordance with the following project schedule:

- January 5-19, 2024 – Representatives of WPPAW to meet with City staff to discuss size, type, color, style, format of the walking tour map, number of sites to be on the map, and videography of the sites. WPPAW to develop draft of walking tour map and begin writing text for the historic sites.
- January 22-24, 2024 – Representatives of WPPAW to meet with City staff to review the draft of the map and finalize texts for various historic sites.
- January 22-29, 2024 – WPPAW to refine walking tour printed map based on City comments and finalize texts for historic sites and perform additional research for sites.
- January 30-31, 2024 – WPPAW to meet with City staff to review finalized map and historic texts.
- January 31, 2024 – WPPAW to commence organizing and populating content (e.g., photos, videos, verbiage, and other) for the website and mobile app.
- February 19, 2024 – WPPAW to videotape historic sites.
- February 20-23, 2024 – Representatives of WPPAW to meet with City staff to review virtual walking tour video(s).

- February 20-28, 2024 – WPPAW to edit virtual walking tour video(s).
- March 1, 2024 – April 17, 2024 – WPPAW to formulate data (e.g., walking tour map, texts for historic sites, and videography of the walking tour) into the website and mobile app.
- April 17-20, 2024 – Representatives of WPPAW to meet with City staff to review website and mobile app.
- April 20-May 7, 2024 – WPPAW to further develop website and commence mobile app integration, and publish in the Google and Apple Stores and/or make necessary edits to satisfy Google and Apple compliance standards for Google and Apple Store apps.
- May 6-8, 2024 – Representatives of WPPAW to meet with City staff to review the web-based application, historic web page, and virtual walking tour.
- May 9, 2024 – Presentation of walking tour map (print and web-based application and historic webpage and virtual walking tour) to the City Council for feedback
- May 10-31, 2024 – WPPAW to revise walking tour map in accordance with City Council feedback.
- June 1-7, 2024 – WPPAW to print 5,000 hard copies of the walking tour map.
- June 8, 2024 – WPPAW to present all deliverables to the City.

Section 4. Compensation. All invoices, and the processing and payment thereof, shall be in accordance with the Local Government Prompt Payment Act, Section 218.70, et. seq., Florida Statutes. The total compensation due to WPPAW for the provision of services set forth in Section 2 herein not to exceed fifty thousand and no/100 dollars (\$50,000.00), which shall be payable as follows:

- A. A lump sum payment in the amount of \$25,000.00 made payable to Applied Webology after completion of the initial design build of the mobile app and publication of same, and initial design and creation of the website, all of which shall be to the sole satisfaction of the City. Applied Webology shall thereafter provide four (4) years of hosting and ADA compliance upkeep for the website, and four (4) years of mobile app design changes and hosting.
- B. A lump sum payment in the amount of \$20,000.00 made payable to A Walk in the Past after completion of historical research and text, and creating the Fellsmere Historic District Walking Tour map and videography of the designated historical sites along the Fellsmere Historic District Walking Tour.
- C. A lump sum payment in the amount of \$5,000.00 to A Walk in the Past after printing of five thousand (5,000) copies of the Fellsmere Historic District Walking Tour.

Any additional services provided by WPPAW outside the Scope of Services set forth in Section 2 are payable to A Walk in the Past on an hourly basis at a rate of \$50 per hour for all work and Applied Webology on an hourly basis at a rate of \$75 per hour for work in connection with the mobile app and \$100 per hour for work in connection with the website. WPPAW shall not provide any services beyond the Scope of Services set forth in Section 2 without the express written consent of the City, which consent may be withheld for any reason in the sole discretion of the City.

Section 5. Term. Unless terminated earlier in accordance with Section 9 of this Agreement, this Agreement shall commence upon the date the last of the Parties executes this Agreement (the "Commencement Date") and end at midnight on the fifth-year anniversary of the Commencement Date.

Section 6. Insurance.

A. WPPAW shall purchase insurance coverage that will satisfactorily insure WPPAW against claims and liability that could arise because of the execution of and performance under this Agreement. WPPAW will provide written proof of its insurance coverage from time to time as reasonably requested by the City. WPPAW shall maintain during the life of this Agreement insurance approved by City of the following types:

- i. Worker's Compensation: For all of its employees engaged in work on the project under this Agreement. In case any employee engaged in hazardous work on the project is not protected under the Worker's Compensation statute, WPPAW shall provide Employer's Liability insurance for the protection of such of its employees not otherwise protected under such provisions.

Coverage A - Worker's Compensation - Statutory

Coverage B - Employer's Liability - \$100,000 each accident

Coverage C - Disease Policy Limit -- \$500,000

- ii. General Liability: Commercial general liability coverage, including contractual liability and independent contractor, with a minimum combined single limit of \$1,000,000 per occurrence with a minimum of \$2,000,000 aggregate coverage.
- iii. Automobile Liability: Automobile liability insurance including all owned, hired, and non-owned automobiles. The minimum primary limits shall be no less than \$1,000,000.00 per occurrence and personal injury coverage of \$100,000.
- iv. Professional Liability: Professional liability insurance at a minimum limit of \$1,000,000, including errors and omissions for any design work.

B. Certificates of Insurance: WPPAW shall furnish to the City certificates of insurance allowing thirty (30) days written notice of any change, cancellation, or non-renewal. Such certificates shall contain the following wording: "SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL NOTICE AT LEAST THIRTY (30) DAYS PRIOR TO CANCELLATION TO THE CERTIFICATE HOLDER NAMED HEREIN." If the insurance policies expire during the term of this Agreement for services hereunder, a renewal certificate shall be filed with the City thirty (30) days prior to the renewal date.

C. WPPAW agrees to provide the insurance written by a carrier licensed to do business in Florida. To the extent available, the policy shall be an occurrence policy, not a claims-made policy. The insurance company selected shall be rated A+ VII or better, per the Best's Key Rating Guide.

Section 7. Sovereign Immunity. Nothing in this Agreement, any work order or any other document, or any statement, action, or omission of City or any City official, employee, or representative shall be construed as a waiver or attempted waiver of immunity from, or limitation of, liability the City has under the Doctrine of Sovereign Immunity under the Florida Constitution and Florida Statutes, including but not limited to, Section 768.28 Florida Statutes, as amended. In the event any claim or lawsuit is brought against the City the City shall not be liable to pay a claim or a judgment by any one person or entity or any claim or judgment or portions thereof which

when totaled with all other claims and judgments paid arising out of the same incident or occurrence, which exceeds the amount of liability as set forth in Section 768.28 Florida Statutes, provided that the payment of said claim(s) shall be further limited to the actual amount of insurance proceeds paid for such claim(s). Nothing in this Agreement shall be construed as consent by the City to be sued by third parties in any matter whether arising out of this Agreement or anything else whatsoever.

Section 8. Work Product. WPPAW hereby agrees that all work produced pursuant to this Agreement and provided to the City during and upon completion of this Agreement, shall be the property of the City.

Section 9. Termination. Subject to the provisions of Sections 10, 27, 28, and 29, either Party may terminate this Agreement for cause in the event the other party fails to comply with any provisions of this Agreement, which failure shall not have been cured within thirty (30) days after receiving written notice thereof from the other Party. The City may terminate this Agreement without cause by providing not less than ninety (90) days' written notice to WPPAW.

Section 10. Public Records. City is a "public agency" subject to Chapter 119 Public Records, Florida Statutes.

IF WPPAW HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO WPPAW'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 22 SOUTH ORANGE STREET, FELLSMERE, FLORIDA 32948, (772) 646-6301, CITYCLERK@CITYOFFELLSMERE.ORG.

- 1) WPPAW shall comply with Florida public records law, specifically to:
 - a. Keep and maintain public records required by the City to perform the service.
 - b. Upon request from the City's custodian of public records, provide the City 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 Section 119.07, Florida Statutes, as amended, or as otherwise provided by law.
 - c. 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 WPPAW does not transfer the records to the City.
 - d. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of WPPAW or keep and maintain public records required by the City to perform the service. If WPPAW transfers all public records to the City upon completion of the contract, WPPAW shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If WPPAW keeps and maintains public records upon completion of the contract, WPPAW shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the

City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- 2) Requests. Requests for public records shall be processed as follows:
 - a. If WPPAW receives a request to inspect or copy public records relating to the City's contract with WPPAW, WPPAW shall advise the requesting party that the request must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify WPPAW of the request, and WPPAW must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
 - b. If WPPAW does not comply with the City's request for the records, such refusal to comply shall constitute grounds for immediate cancellation of this contract at the sole discretion of the City.
 - c. Should WPPAW fail to provide the public records to the City within a reasonable time WPPAW may be subject to penalties under Section 119.10, Florida Statutes.
- 3) Enforcement. Enforcement of requests for public records by civil action will be processed as follows:
 - a. If a civil action is filed against WPPAW to compel production of public records relating to the City's contract for services, the Court shall assess and award against WPPAW the reasonable costs of enforcement, including reasonable attorneys' fees, if:
 - (1) The Court determines that WPPAW unlawfully refused to comply with the public records request within a reasonable time; and
 - (2) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that WPPAW has not complied with the request, to the City and to WPPAW.
 - b. A notice complies with subsection 10.3)a.(2) above if it is sent to the City's custodian of public records and to WPPAW at WPPAW's address listed in this contract or to WPPAW's registered agent. Such notice must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
 - c. If WPPAW complies with public records request within 8 business days after the notice is sent it is not liable for the reasonable costs of enforcement.

Section 11. Independent Contractor; No Joint Venture.

A. WPPAW is engaged to provide services as an independent contractor. The City shall have no control over the conduct of WPPAW except as expressly set forth in this Agreement.

B. The Parties agree that nothing in this Agreement shall create or be construed to create a partnership, joint venture, employment relationship or any other relationship except as set forth in this Agreement.

Section 12. Waiver. Any term or condition of this Agreement may be waived by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall not invalidate this Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Except as otherwise provided herein, the failure of a Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a Party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

Section 13. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida without regard to conflicts of law. Venue for resolution of any dispute arising from or under this Agreement or its performance shall be in Indian River County, Florida and all actions and proceedings arising from or under this Agreement or otherwise related to the subject matter of this Agreement shall be in the court of the State of Florida in Indian River County, Florida, which court shall have exclusive jurisdiction for such purpose.

Section 14. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

Section 15. Authority. Each Party represents that it has the full right and authority to enter into this Agreement, and that the person executing this Agreement on behalf of either Party has the full right and authority to fully commit and bind such Party to the provisions of this Agreement.

Section 16. Counterparts. This Agreement may be signed in any one or more counterparts all of which taken together shall be but one and the same Agreement, and each Party agrees that its signature, whether transmitted by email, facsimile, or by other duplicate, shall be binding as if it is on any signature of the Party to be bound.

Section 17. Conflict. To the extent of a conflict between the terms of this Agreement and those set forth in any exhibits or attachments hereto, the terms of this Agreement shall govern.

Section 18. Assignment. Neither Party shall assign, delegate, or subcontract this Agreement or any rights or obligations hereunder without the prior written consent of the other Party hereto, which consent may be withheld in the sole discretion of the other Party.

Section 19. Indemnification. WPPAW agrees to indemnify, defend, and hold harmless the City, its councilmembers, officers, employees and agents from and against any and all liabilities, claims, suits, demands, losses, causes of action, damages, lawsuits, judgments, including, but not limited to, reasonable attorneys' fees, paralegal fees and costs arising out of any negligence, willful misconduct, or intentional misconduct of WPPAW and causing injury to any person or persons or property, whomsoever and whatsoever related to services provided by WPPAW pursuant to the Agreement. The specific considerations given for the promises of WPPAW set forth in this paragraph are the retention of WPPAW pursuant to the Agreement, and other good and valuable considerations and Ten Dollars (\$10.00) in hand paid by the City to WPPAW, receipt whereof

hereby acknowledged, and the adequacy of which WPPAW accepts as completely fulfilling the obligations of the City. Notwithstanding the provisions of this paragraph, nothing contained herein shall be construed as a waiver of any immunity from, or limitation of liability the City has under the Doctrine of Sovereign Immunity of Section 726.28, Florida Statutes, as amended.

Section 20. Notice. Any notice required or that may be given under, or documents (invoices, etc.) required to be provided pursuant to, this Agreement shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

WPPAW:

A Walk in the Past Productions, LLC
Attention: Richard Votapka
8405 75th Court
Vero Beach, FL 32967

The City of Fellsmere:

City of Fellsmere
Attention: City Manager
22 S. Orange Street
Fellsmere, FL 32948

and

Applied Webology FL, LLC
Attention: Luis Lopez
201 Stony Point Drive
Sebastian, FL 32958

Any notice shall be deemed given upon delivery unless the notice is returned as being “refused,” “moved, not forwardable,” or “unclaimed,” or is otherwise not delivered or deliverable through no fault of the person sending the notice, whereupon the notice shall be deemed given as of the date it is mailed or sent. A Party may change their foregoing address by providing written notification to the other in the manner provided herein.

Section 21. City’s Agent. Except as otherwise provided herein, the City Manager and the Grant Administrator of the City of Fellsmere shall be City’s agents and shall have the authority to administer this Agreement on behalf of the City, including but not limited to the authority to provide notices to WPPAW, and/or enforce or terminate the Agreement.

Section 22. Further Assurances and Cooperation. Each Party agrees to execute and deliver such applications, authorizations, forms, assignments or other documentation as the other Party may reasonably request to carry out the intent of this Agreement.

Section 23. Time for Performance. The provisions of this Agreement relative to number of days shall be deemed to refer to calendar days unless otherwise specified. If the date for the performance of any obligation, or the giving of any notice hereunder falls on a Saturday, Sunday or any day on which banks in New York City are authorized or required by law to close, then the time for such performance or the giving of such notice shall be extended until the next business day.

Section 24. Modifications. This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by written agreement of the Parties hereto.

Section 25. E-Verification System. Pursuant to Section 448.095, Florida Statutes, all

Parties are obligated to register with and utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By signing below, the Parties are certifying that they are registered with, and use, the E-Verify system for all newly hired employees.

Section 26. Prohibition Against Contingent Fees. WPPAW warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for WPPAW, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the WPPAW any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

Section 27. Termination Pursuant to Section 287.135, Florida Statutes. WPPAW certifies that it and those related entities of WPPAW as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this Agreement is for goods or services of one million dollars or more, WPPAW certifies that it and those related entities of WPPAW as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, and are not engaged in business operations in Cuba or Syria.

City may terminate this Agreement if WPPAW is found to have submitted a false certification as provided under Section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by Section 287.135, Florida Statutes. City may also terminate this Agreement if WPPAW, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in Section 215.4725, Florida Statutes.

Section 28. Non-Appropriation. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by the City under this Agreement, the City shall notify WPPAW that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to the City.

Section 29. Drug Free Workplace and Public Entity Crime Forms. A Walk in the Past and Applied Webology shall complete the Drug Free Workplace and Public Entity Crimes forms attached to the Request for Proposal for Fellsmere Historic District Walking Tour and submit same to the City within five (5) days of executing this Agreement. The failure to do so shall render this Agreement null and void.

Section 30. Time Of Essence. Time is of the essence in this Agreement.

[Signatures appear on the following page]

A WALK IN THE PAST PRODUCTIONS, LLC:

By:

Print Name

Title

Date

THE CITY OF FELLSMERE:

Joel Tyson, Mayor

Date

APPLIED WEBOLOGY, LLC:

By:

Print Name

Title

Date