



Fellsmere

CITY COUNCIL MEETING
22 S. Orange St., Fellsmere FL
February 1, 2024 – 7:00 P.M.

AGENDA

1. **CALL TO ORDER:**
2. **ROLL CALL:**
3. **PLEDGE OF ALLEGIANCE**
4. **INVOCATION:**
5. **APPROVAL OF MINUTES: (a) City Council Meeting of January 4, 2024**
6. **PUBLIC HEARING:**
 - (a) **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/*Set continued 2nd Reading and Public Hearing for Ordinance No. 2024-01 for February 15, 2024 at 7:00 P.M., City Council Chambers, 22 S. Orange St., Fellsmere, FL.***
 - (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. /*Set continued 2nd Reading and Public Hearing for Resolution No. 2024-03 for February 15, 2024 at 7:00 P.M., City Council Chambers, 22 S. Orange St., Fellsmere, FL.***

**RECESS COUNCIL MEETING AND CONVENE AS THE
FELLSMERE COMMUNITY REDEVELOPMENT AGENCY**

(c) Declare 208 South Mulberry Street as Surplus Property. /CRA Public Hearing for February 1, 2024 at 7:00 P.M., City Council Chambers, 22 S. Orange St., Fellsmere, FL.

**ADJOURN AS THE FELLSMERE COMMUNITY REDEVELOPMENT AGENCY
AND RECONVENE AS THE CITY COUNCIL**

- 7. PUBLIC COMMENTS:**
- 8. MANAGER'S MATTERS:**
- 9. MAYOR'S MATTERS:**
 - (a) Police Department Report- December 2023**
- 10. COUNCIL MEMBER'S MATTERS:**
- 11. CITY ATTORNEY'S MATTERS:**
- 12. CONSENT AGENDA:**
 - (a) Appoint Ben Baker as a member of the MPO Citizen Advisory Committee.**
- 13. 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 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 Public Hearing for March 7, 2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.**
 - (b) Approval of Indian River County American Rescue Plan Agreement.**
 - (c) Approval of piggyback REVIZE Web Services Sales Agreement.**
 - (d) Approval of Amendments to the Professional Services Agreement with "A Walk in the Past Productions" and "Applied Webology FL, LLC".**
 - (e) Approval of Wetland Mitigation Credit Reservation and Sale for SW Lake and State Street Improvement Project.**
 - (f) Approval of proposal for EXP US Services for engineering services for Planning, Design and Permitting of the Southern Bypass.**

(g) ORDINANCE NO. 2024-06/ 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 C-2 GENERAL COMMERCIAL TO POD-PLANNED DEVELOPMENT DISTRICT FOR LAND HAVING A COMPREHENSIVE FUTURE LAND USE MAP DESIGNATION OF GENERAL COMMERCIAL (GC) CONTAINING 5.20 ACRES, MORE OR LESS, LOCATED AT 12201 COUNTY ROAD 512, ON THE EAST SIDE OF OPERATION HOPE FOR A STORAGE AND MAINTENANCE BUILDING OWNED BY TEAGAN, LLC, A FLORIDA LIMITED LIABILITY COMPANY; 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 2nd Reading and Public Hearing for February 15,2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.*

RESOLUTION NO. 2024-16/A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, APPROVING THE FINAL DEVELOPMENT PLAN FOR A PLANNED DEVELOPMENT CONSISTING OF 5.20 ACRES, MORE OR LESS OWNED BY TEAGAN, LLC FOR A STORAGE AND MAINTENANCE BUILDING LOCATED AT 12201 COUNTY ROAD 512 ON THE EAST SIDE OF OPERATION HOPE 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 2nd Reading and Public Hearing for February 15,2024 at 7:00 P.M City Council Chambers, 22 S. Orange St., Fellsmere, FL.*

(h) ORDINANCE NO. 2024-08/AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA BY ADDING TO CHAPTER 2 ADMINISTRATION, ARTICLE III OFFICERS AND EMPLOYEES SECTION 2-92 BUDGET; PROVIDING FOR RATIFICATION; AMENDMENT; CONFLICTS; SEVERABILITY; CODIFICATION AND AN EFFECTIVE DATE. */1st Reading and set 2nd Reading and Public Hearing for February 15,2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.*

ORDINANCE NO. 2024-09/ AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING CHAPTER 2 ADMINISTRATION, ARTICLE V BOARDS, COMMISSIONS AND DEPARTMENTS OF THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA BY AMENDING SECTION 2-167 TERMS DEFINED AND CONSTRUED, SECTION 2-168 CODE ENFORCEMENT SPECIAL MASTER, SECTION 2-169 CODE ENFORCEMENT CLERK AND OTHER EMPLOYEES, SECTION 2-170 ACTIONS BY THE CITY ATTORNEY, SECTION 2-171 ENFORCEMENT PROCEDURE, SECTION 2-172 RIGHTS OF ALLEGED VIOLATORS; PAYMENT OF PENALTY; RIGHT OF HEARING; FAILURE TO PAY AND CORRECT, SECTION 2-173 HEARINGS AND PROCEDURES, SECTION 2-174 PENALTIES, SECTION 2-176 LIENS, AND SECTION 2-179 SCHEDULE OF CIVIL PENALTIES AND COSTS; PROVIDING FOR RATIFICATION, AMENDMENTS, SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE. */1st Reading and set 2nd Reading and Public Hearing for February 15,2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.*

ORDINANCE NO. 2024-10/ AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA BY AMENDING CHAPTER 2 ADMINISTRATION, ARTICLE VII PROCUREMENT SECTION 2-237 BIDDING PROCEDURE AND SECTION 2-238 PROCEDURE IN LIEU OF BIDDING; PROVIDING FOR RATIFICATION; AMENDMENT; CONFLICTS; SEVERABILITY; CODIFICATION AND AN EFFECTIVE DATE. */1st Reading and set 2nd Reading and Public Hearing for February 15,2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.*

14. 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/327215613>

To join meeting using your phone call 1-872-240-3212 Access Code: 327-215-613

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.

CO20240201AGENDA.DOC

**CITY COUNCIL MEETING
January 4, 2024 – 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 December 6, 2023.

MOTION by Council Member Renick **SECONDED** by Council Member Salgado to approve the minutes for the City Council Meeting of December 6, 2023.

ALL AYES:

MOTION CARRIED 5-0

6. **PRESENTATION: (a)** Boys and Girls Club of Indian River County

Mayor introduced the presentation, and Teresita Mosqueda, the Program Director for the Boys and Girls Club came to the podium. She introduced the Angela Martinez Hernandez, Youth of the Year and Melandie Ramos, Junior Youth of the Year. She stated that the Youth of the Year is the highest honor a Boys and Girls Club member can receive, and the Youth of the Year program recognizes young people for their outstanding leadership service academic excellence and dedication to health and wellbeing. This program offers the opportunity to compete on a national level and become the National Youth of the Year to represent the Boys and Girls Club of America and the voices of millions of clubs. This opens many doors to branch out and make connections and could also win scholarships and guidance through college.

Mayor Tyson and the Council congratulated both ladies. Photos were taken.

7. **PUBLIC COMMENTS:**

Mayor Tyson asked if anyone else from the public had a comment to state their name and address for the record, hearing none he continued with the next agenda item.

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

- **Homeless Children's Foundation-** This item will be pushed off to the next meeting, they have asked to come and introduce themselves, but they had to cancel at the last minute.
- **Building Services Agreement-** Council has authorized Manager Mathes to look for alternative firms to SAFE BUILT as an alternative to bring a in house building official just because of the concerns of the cost of an in house building official. He has all the paperwork done through the attorney's office to bring in a new firm. However, he received an email from Allen Duff just last week, who is a former City of Fellsmere building official in the early 2000's and he was basically looking to get back into government building official work. He has been working as a private inspector for a number of years now. And he was looking to come back, and he certainly would be able to work for an affordable rate that would allow the city to bring him in. Here he has had a long career, his concern would be his tenure here and the transition if they were to go with an in house building official. He suggested that if the Council wants an in-house building official, he will ask that they also have a standing contract with a building firm that would be able to be used when Allen is not available. They have two options, an in-house option or changing to CAPS, which is the company he vetted for. And if they go with an in-house, he will reach out to both SAFE BUILT and CAPS and see if they wish to be the standard in the firm. He asked Council for their direction. After discussion, the Council agreed to bring in an in-house building official and also reach out to a stand in firm. Manager Mathes stated the he will go ahead and speak to Mr. Duff a little bit more to iron out any specifics, his price would be the price of about a director. And with his experience, it would not be the entry director price, but it would be close to \$90,000.

- **Building Permit Help Workshop** – He is thinking about maybe holding a series of workshops, with Dulce, the new permit clerk, and just try to help people understand how to be successful on applying for a permit, closing it out, getting the inspections called, where they can find data, because technically, we're not supposed to do it for him.
- **Joint BOCC/ City Council Meeting, City Hall Auditorium – January 30th from 1-3pm-** He had a meeting with the County Administrator to review the draft agenda, there was many items stricken through and he asked if there was anything that was stricken through that they would like to be back on the Agenda. After discussion, the Council made their suggestions.
County Commissioner Susan Adams came to the podium and wanted to give some background on kind of the structure of these meetings and what we have hoped to accomplish with the series of meetings. Tom Lanahan, from the Treasure Coast Regional Planning Council will be present and act as moderator. They have allotted two hours. And the goal is to have conversations about larger policy issues that the two governmental bodies might need to collaborate on reach not regionally, but just in the bigger picture. And she thinks some of the things that got struck from the list, were things that probably needed to have a staff level conversation ahead of time, it's not that they don't want to talk about them, or that staff doesn't think that they need to be talked about, with some of our newer staff, it just needs to have a little bit of time for their staff to get up to date with some of those things. And some of it is really just a conversation that probably needs to happen between Manager Mathes and the Administrator. Their intent is to is to have multiple meetings a year, maybe twice a year with each group, to continue having these conversations. For the first meeting, the goal was kind of to talk about some of the broader things that we all might need to just start getting our heads around as it impacts what the county is doing, what the city's plans might be.
Manager Mathes recommended to the Council take all the issues that are stricken out that they want to talk about and add them as secondary, that if there is time, maybe they can just bring them up really quick at the end. The items that they agreed on were the South Pipe Crossing, the FWC ditches, and three interlocal agreements. The Council agreed.
Mayor Tyson would like to have the conversation regarding the FWCD put on the agenda. The council agreed to have it on the agenda as a standing item instead of an additional item.
- **Joint FWCD/ City Council Meeting on Stormwater-** He has an invite to attend the Fellsmere Water Control District board meeting on the 11th. They are going to be talking about a number of things. One, they are going to be talking about the discussion, they have already started with the district about taking over some of their ditches, no commitments, just more conversation, obviously, they will be talking about the maintenance of the ditches in general. And he will be asking again about the meeting date.
- **FEMA Appeal for Road Dirt** – The second appeal has been submitted. The city was denied on the first appeal. The second appeal is going to an impartial judge and will be scheduling a scheduling meeting next week to figure out the process how long is it going to take to get to the end it sounds like it's not going to take long, he is hoping for by spring summer the latest and this will be done either yes or no one of the two. It may end up being a negotiation.

The following are announcements for future deadlines and events:

- **Form 6 to be online 01/01/24 and due on 07/01/24**
- **Offices Closed 1/15(MLK and 1/18 & 1/19 (1/2 day for FrogLeg)**
- **HALO Spaygetti Family Festival 2/3 from 10am-6pm.**

9. MAYOR'S MATTERS:

Mayor Tyson attended the Council of Local Government meeting at Marsh Landing, there was one installation. He congratulated Susan Adams that is now the chair of the County Commission. The council applauded.

10. COUNCIL MEMBER'S MATTERS:

Council Member Herrera- He stated that the Our Lady of Guadalupe event went very well. He wanted to thank the Chief for taking care of a person that was throwing fireworks on the church grounds.

Council Member Salgado – She had no matters.

Council Member Hernandez – She had no matters.

Council Member Renick – He stated that he attended the MPO meeting. They did a presentation on the census urban area boundaries that is updated every ten years. They also had a brief presentation on the 2020 community characteristics report. The City of Fellsmere's median age is actually the lowest in the county at 33.9 years.

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 REDEVELOPMENT, 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 February 1, 2024 at 7:00 P.M.*

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

Manager Mathes stated that they tried this in December and the Council directed that they bring it back with the drafts of the entire packet to date so that they can get a feel for the project as a whole before they start making individual decisions. This is one of these complex projects that requires multiple approvals to get through the whole thing. The Comp Plan being the first one and their request is to add 12 units from 325 to 337. The big issue is the switch from the ratio of townhomes and single family. In the current comp plan language, that ratio is almost a 50/50 ratio. With the proposed comp plan, that language is closer to about 30%, townhomes and 70% single family. What that does to the property is your you need more land for a single family because it takes one single family to equal two townhomes space-wise. And what results is results in a lot of 40-foot-wide lots and 50-foot-wide lots. And there is nothing wrong with that, if that is acceptable to the Council, they just do not have good experience with 50-foot lots in Fellsmere the only example they have is the Habitat subdivision Grace Meadows and they do not have enough parking spaces for cars. And so, they park them on open space on front yards and the place is just a mess with dirt and just run out grass, and that is one of his concerns. Ryan Homes is the home builder for this project, and they have had a lot of success in doing this in other places that 40- and 50-foot lots. They claim that strong HOA is going to take any concerns they have. At the staff level, they try to mitigate the proposed Comp Plan change and the resulting site plan by forcing some dispersed parking for guests and overflow.

What they did with this concept is they really just deleted lots. In the original concept all those were single family lots. To get back to 325 units and a 50/50 split, they really just deleted lots as all they did, they did not really delve deeply into redesigning it and to see how it would work. And he does not know if this is really a fair analysis of how their development would look with the Comp Plan change not being approved. But clearly you can see there is a lot of available space that is not being used under the original Comp Plan site plan that either could be preservation or could be taking these 50-foot lots and turning them all into 60-foot lots. And what that would mean is you would have to spread them out a little bit more in the common space that would be taken up by single-family homes. Even though it does not meet the 75-foot frontage of the city's normal code a 60-foot frontage is a lot more beneficial for providing a driveway on the side to get to the back, if they felt that was important for overflow parking.

This is why in December he cautioned Council that he did not think it was fair to the developer to approve a Comp Plan and then later on, deny the Site Plan. And so, they wanted to make sure that at this time, if there are any concerns that they really do share them.

Manager Mathes stated that there's a couple of questions that the Council will have to answer not so much the Comp Plan, but with the Site Plan so that that can bleed into whether the Comp Plan change is needed. The first question is whether the Council is going to accept the payment in lieu of for conservation. If the answer is no, he has to take 15% of his site and preserve it. The second question is what buildable lot is the Council comfortable with. If they are not comfortable with the forty feet, then why give the Comp Plan change, because the only reason the Comp Plan changes are needed so he can get the 225 single family instead of the 150 that he is originally supposed to get into this current Comp Plan. And those extra seventy units is what is causing it to go to plus 40-foot lots. If the Council decides to live with a 50-foot lot or smaller, then they have to decide if they want to impose the conditions which they adopted in the city's Land Development Code for non-conforming legal lots. That is going to be very important to know, for the home builder, because he is going to have to pick a model that fits into that development width. They are not decisions, but they are really guidance at this point.

Council Member Renick stated that if they are going to theoretically approve the Comp Plan amendment as proposed, it would not necessarily be the site plan that it would be bringing forth. He has a concern with the small lot size and feels like there are a lot of unanswered questions, is it something that is beneficial or problematic or somewhere in between.

Council Member Salgado stated that she would like the lots to be 60 feet or more because Habitat is 50 foot lots and they have issues.

Manager Mathes asked if there would be some compromise in that if they gave the city a concept that maximize the 60-foot lots, but they could not do them all 60 because of the space limitations stormwater. Would there be some compromise for some 50s just so they can hit the current Comp Plan total of 325.

Manager Mathes asked Council if they would like to see a real concept plan of what they would propose if they deny the Comp plan, maximize the 60-foot lots based on the current Comp Plan and see what they can provide for preservation. The Council agreed.

Susan Adams asked if they were proposing to put parking separate from like additional parking. Manager Mathe showed Mrs. Adams the proposed parking on the site plan. Mrs. Adams commented if it realistic for people in a single-family home to park somewhere else and carry their stuff. She also agreed with Council Member Renick and Salgado regarding the lot size. She wanted to caution the Council that not every project that comes to the city is going to be necessarily the best project for the city. And sometimes they have visions and goals that they are trying to achieve. And it might take a little bit longer for that right person to come along to carry those out. But if they make exceptions for everybody that comes along, they are never going to get to that goal. And it is okay to say no, sometimes even if it is hard.

Manager Mathes added that it is not a no to the project. It is a no to the iteration of the project. He does not think anyone is saying they do not want this property to develop and be part of Fellsmere. It is just that they want it to be the city's vision. Timing is always important to what is their breakdown, what is their take down. He will try to have the developer attend the next meeting so that he can answer some questions.

MOTION by Council Member Salgado **SECONDED** by Council Member Renick to table this item to February 1st, 2024 at 7pm in the Council Chambers, 22 S. Orange St., Fellsmere, Florida.

ALL AYES

MOTION CARRIED. 5-0

- (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**

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2024-03, by title only.

Manager Mathes stated that this is a first reading so there are no decisions being made tonight. This is a conditional use as required by code for permanent food truck application. He discussed the site plans. The council had previously authorized the temporary driveway on Broadway a while back. They have conditions in the approval if it is approved that that driveway will go away once the alleyway project is done. And the city has ARPA money to help fund that project and that is working through design at this time. He does not recommend parking the food truck where it is currently parked, he does not think it is a good idea to put a food truck with a lot of activity in a parking lot. They have plenty of room to slide the food truck which is what they want to do close to their porch so people can come on their porch and access the food truck and then be able to either sit on the porch or in the future, they are going to have outdoor seating in the front yard areas. One of them is an outdoor seating pad and the other is actually a pergola. Those are different phases, obviously, and the phases really would depend on when they can afford the impact fees. Other than the food truck, this is really just providing some parking that would be needed. They are three spaces short on their parking, so there is also a payment in lieu of for that.

Council Member Salgado asked how many feet are they from Marsh Landing and if this food truck temporary. Manager Mathes responded at least twenty feet away from the building and this is a permanent food truck.

Manager Mathes discussed the conditions and only focused on the unique conditions.

- The current code requirement for food trucks says alcohol is not to be served. This being a permanent application along with a permanent building, the applicant is asking to be able to serve alcohol and that is one relief.

- They are short three parking spaces and right now the code has a parking in lieu of at \$7,000 a piece, he brought this to Council's attention a few months back and they said is too high, let's lower. They are now proposing \$3,500 per space.

- As far as the roof slope goes, it is really just to legalize the existing building, the city has a slope requirement for roofs on Broadway that is four to twelve and their existing roof is two to twelve. This is just to legalize the existing porch.

- The city code requires that any outdoor vending machines must be shown on the site plan. Furthermore, on North Broadway, it says you cannot have them in the front of the building, because most of the buildings on Broadway are supposed to be to the sidewalk, and there is really no place to put them except on the sidewalk and the city does not want them on the sidewalk. Since he has that large setback, he can put outdoor vending machines. He has two right now, he has a vending machine for money, and he also has one for propane tank sales. This condition requires him to move the propane tank sales to the side of the building and only keep the ATM up front.

- The city has code a requirement that they have to pay for adjacent alleyway swell improvements. Since the city is doing the alley, they are waiving some of that requirements. Also, there is a code requirement that the finished floor must match the back of sidewalk because that is where most of the building is going to be. Since this one is an existing building, they are basically legalizing that variance through this site plan, so it is not a new thing. It is just legalizing the building that is there now.

- Condition "g" just to acknowledge that he has a temporary driveway up front and that will go away when the alleys are done.

- Condition "h" is to legalize the setback.

- Broadway's required to plant street trees, when they develop, the city is requiring him to pay a payment of \$150 per inch, which would be a total of \$1125 for his trees that the city would then use in their Arbor fund to plant those trees whenever they do Broadway. The city does not want to put the trees in now and then get tore up when Broadway gets constructed.

- The city is giving relief of the civic space requirement because that is pretty much what his whole front yard is a civic space, he wants to do a pergola he wants to do the outdoor dining, that's all-public space.

- The city is not requiring any more additional interior open space trees, because he does have the specimen tree on there, which he is keeping.

The applicant will be required to put his landscaping and within 12 months of the approval, they will be required to have a handicap path from the parking lot to the front door, within 90 days of approval. They will obviously have to obtain permits to build a pergola and outdoor seating. He is going to remove anything on site that is inconsistent with this plan. And he will have to make sure there's ADA access to any outside areas that he creates for the public. He is using stabilized millings for his parking which is allowed, this is a standard condition the city put in there that if he does not take care of them and make them clean and neat, keep the weeds out of that we ever allowance to tell him to pave it. He needs to make sure anything he does other than what is varied is consistent with the old town district. He is not asking for any outdoor sales, except for the food truck. They are doing the city standard cross access and cross parking easement and the standard solid waste. And then he has to give the city a five-foot alleyway dedication, which is required by the city code. And he has to pay in the transit fund that is required for projects in the overlays. That is at \$100 per parking space, and he has twenty-one required spaces. And at staff level, they would be okay with payment plans for these things.

Manager Mathes stated that he did put the impact fee actual dollars but if the county updates their impact fee schedule those number will be wrong. So, it might just be a reference to the impact fee schedule. He will get with the city attorney regarding the impact fee schedule.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Herrera **SECONDED** by Council Member Renick to approve the 1st reading and set 2nd reading and public hearing for February 1, 2024, for Resolution No. 2024-03.

ALL AYES:

MOTION CARRIED 5-0

- (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.

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2024-03, by title only.

Manager Mathes stated that this is intergovernmental paperwork. They have had this in place for about five years. And apparently, they run about every five years and the State is just asking the city to update it. It allows the city to get mutual aid in emergencies.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Renick **SECONDED** by Council Member Hernandez to approve Resolution No. 2024.13

ALL AYES:

MOTION CARRIED 5-0

- (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.

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2024-17, by title only.

Manager Mathes this is a requirement of the USDA commercial facility direct loan program that even though the city is not being required to take out bonds, they still want the city to pass this resolution. He said they will get about 75% payment for this equipment, the cost is about \$300,000. This is long awaited equipment to fix the swales, fix pipes, cut trees. And the 25% will just pay directly out of the infrastructure program even though it is a loan program the city will pay that off in one payment as soon as we can. But they will see if the terms are fine, they may make payments.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Salgado **SECONDED** by Council Member Hernandez to approve Resolution No. 2024-17.

ALL AYES:

MOTION CARRIED 5-0

- (e) **Recommendation** regarding request for Abatement of Code Enforcement Lien for 12740 CR512(Dollar General).

Manager Mathes There's a little unique aspect of this case. And one of that is the bureaucracy of Dollar General are claiming they did not get the civil violation notice. So, they did not know what is happening. But obviously, the city got a green card signed return receipt, so somebody at Dollar General knew about it. But they did not really take any action to resolve this until the kept putting more and more pressure on them. So finally, the city got to hold of the right people at that bureaucracy to make it happen.

Once they put their attention to it, Dollar General did take care of it. It was another example of their maintenance vendors not doing their job. There were holes in the side of the building, there was mold on the back of the building or mildew. There was constant outdoor storage, what is not allowed, and the landscape slowly dies and never gets replaced. And so there was like 25% of their landscape that was missing or dead. And this is also a repeat violation because four years ago, the exact same thing happened. And the city ended up collecting \$18,000 from them. Now they are at \$118,000 and they have asked for an abatement, the owner of the property is not Dollar General, to his understanding, it is one of those type of triple net leases where the tenants are responsible for everything. And the owner was trying to refinance the property and that's kind of what caused this

to have to get fixed. Because when he found the lien on the property, he could not do the refinancing. With a \$118,000 lien a bank is not going to refinance. He asked Council what abatement amount do they feel is appropriate for their behavior. And he encouraged it not to be too low, because they are repeat violators.

Manager Mathes stated that he did get confirmation from Dollar General that they are going to change their vendor to what is called a VIP service, where they have to do mulch on a regular basis, they have to replace the plants. So apparently, they just had a blow and go landscape firm. Now they are going to make it a VIP landscape service where they have to basically keep it perfect. They did make that commitment. So hopefully they will not fall back into this in the future. They are now in physical compliance.

Ruperto Irizarry, Field District Operation Manager for Dollar General. He apologized for the Dollar General in Fellsmere not being maintained. He made sure everything got completed and followed up. And the commitment that he has received is that they are going to be following up. They have a new structure, and they have a lot of different things going on at Dollar General. They do have a new CEO in place and the commitment has been made to take not only the facility in Fellsmere but across the country. He again, apologized for the matter. It is not easy in retail to get things done during the holidays, but they received the commitment from the vendor, and he actually did execute and got things done. They have taken responsibility and it is their fault, no excuses.

Mayor Tyson stated the person that is in there now is certainly doing their best. It was an embarrassment, and it got to the point where he refused to go in because of all the stuff on the floors but he has seen a big change. He stated that the store at 510 is always neat and he would like to see that that quality out in Fellsmere. He has got complaints about the size of the facility it is undersized, and it should be twice the size to accommodate the amount of business that they do. He stated that the city would appreciate it if they clean the place up and offer a good facility. Good service.

Mr. Irizarry responded that that is their goal, and they want to stay in business. He gave his contact information in case there are any further issues he will take care of it. The city can deal directly with him not with a corporation that no one seems to find, he will be effective,

Mayor Tyson stated that the city appreciates that, and they wish him lots of luck.

The Council proceeded to discuss the abatement amount.

Council Member Renick stated that he wanted to continue to be partners with them and recommended 30%.

Council Member Salgado stated that they are a corporation, and this is their second offense and if they want to do payments they can and recommended 50%.

Council Member recommended 35%.

Council Member recommended 40%

MOTION by Council Member Herrera to approve the Abatement of Code Enforcement Lien at 40%.
No second motion made.

MOTION by Council Member Renick **SECONDED** by Council Member Hernandez to approve the Abatement of Code Enforcement Lien for 12955 100th Lane and accept 35%, \$41,643 to release the lien.

MOTION CARRIED 4-1

- (f) **Approval** of Work Authorization # 1 with Renker Eich Parks Architects to provide architectural services related to the Recreated Train Village project.

Manager Mathes stated that the city currently has a grant application pending that is supposed to be notified in spring or summer when the budget season's over. He does not think the city is going to be funded because they are pretty down on the priority list. And for the longest time the Council has talked about having to make tough decisions with ARPA, because ARPA was paying \$300,000 to this project, and the grant was like \$400,000. And without the grant 300,000 is not going to do all the buildings. And he had talked in the past about doing a couple of the buildings with the \$300,000, ARPA, and he was recommending we do the train depot, which is the public bathroom at the north end of Broadway and the Machine Shop, which is the second Community Center. With the amount of use the current community center gets, he thinks that is important. Plus, it will be a high-quality Community Center compared to the older one. And it will also have some really nice outdoor space

between the Section Foreman's house and the Machine Shop Community Center. And so, this is just to hire Renker Parks, he has done all the other buildings to design the train depot because that building has not been designed yet. And they are continuing as consultants, and it is through the city's master agreement. And this is his first work under the new master agreement that the Council approved a few months back.

Council Member Renick asked what is the amount.

Manager Mathes responded \$69,000 and they will be updating the plans because with building plans, they do go stale, not like civil plans building plans go stale every three years because every three years they update the building code. They have to update the plans for the Machine Shop and Warehouse. And then he is going to design the Blacksmith shop and the passenger train station. Plus, it also includes some construction engineering inspection and things like that.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Herrera **SECONDED** by Council Member Herrera to approve the Work Authorization # 1 with Renker Eich Parks Architects.

ALL AYES

MOTION CARRIED 5-0

- (g) **Approval** of Best Buy Technology update proposal through Omnia Partners Public Sector cooperative purchasing.

Manager Mathes asked for this item to be continued to the next meeting. The city attorney would like to delve a little deeper into their master contracts.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Renick **SECONDED** by Council Member Hernandez to table this item to the February 1st City Council Meeting.

ALL AYES

MOTION CARRIED 5-0

- (h) **Approval** of ARPA Amendment.

Manager Mathes stated this is a unique ARPA amendment, they just had a quarterly amendment, but they were having some discussions with the auditor, and this is a plan of which he had thought. The city has about \$2.3 million that they have not spent yet. And they have to have it obligated, which means under contract by December of this year. He feels pretty comfortable they can do that but to be safe, one of the things we can do, which is what this agenda item would authorize if it is acceptable to Council is to use ARPA money to pay for staff salaries until the money's gone. Because again, they can pay staff salaries. That way, they can get it all spent by end of this year and what they would do then is take all that general fund money that they are not spending, which doesn't have time limits on it doesn't have federal reporting requirements on it, doesn't have any restrictions on it they can use that money then to do the ARPA list at the city's own leisure without the pressure of these deadlines. The ARPA list does not change, they will still do those projects. He will still bring it to Council on a quarterly basis and still track expenditures. But they are kind of doing a shell game, they will be using ARPA to pay for staff, and they will use what they normally pay for staff and then to pay for ARPA, just so they can get by those deadlines and not worry about the stress of having to meet them. This authorizes staff to use ARPA to pay payroll, and they can still pay for those other projects. Any money that they do not spend on the general fund, and it will not go off and do other things with it that is going to be used for the ARPA list.

Claudia Alvarado, Finance Director stated that she wanted to remind the Council that they had elected to choose the standard allowance because the city received funds less than \$10 million. The feds allowed Council to commit these funds to government services if they wish. And because Council elected to do the standard, then they do not have to provide that breakdown of all the projects.

Mayor Tyson asked if they do a separate audit on those funds.

Claudia responded that they will eventually right now all the city has been doing is reporting by April 1 of each year. She added that under the standard allowance for a revenue loss is what allows them to spend that money that way through for payroll.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Renick **SECONDED** by Council Member Hernandez to approval of the ARPA amendment.

ALL AYES

MOTION CARRIED 5-0

- (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.

Attorney Warren Dill stated that this is an annual agreement that the Supervisor of Election sends out and City Clerk Maria sent it to him to take a look at and I reviewed it pulled out his file from last year and it is identical, substantially, except for years are different things like that. This agreement is what they have had every year, the charges to the city are the same as they have always been to conduct a municipal election, assuming the city continues on the same path and have the city's elections simultaneously with the state elections, which they do. There is no reason not to sign it unless they do not want to have a precinct out in Fellsmere.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Salgado **SECONDED** by Council Member Hernandez to approve the Mayor and City Clerk to execute the "Municipal Elections Agreement."

ALL AYES

MOTION CARRIED 5-0

- (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**

Mayor Tyson introduced the Ordinance and Attorney Dill read Ordinance No 2024-01, by title only.

Manager Mathes stated that this is the project they normally call Fellsmere 392, also Fellsmere Preserve. They have a representative present and online. There has been a major adjustment to this project since they started it and that is the surf park that they introduced a couple of weeks ago. And as part of that introduction, Council also authorized him to go after a Community Development Economic Development Grant to assist them with their infrastructure. What he wanted to do, if it is okay, is to ask the Surf Park Representative Luiz who is in the audience to produce a short presentation of a Surf Park and get the Council up to speed on what that is what it means, how it impacts the site plan. And then maybe they can go into the Comp Plan, they are trying first on Council's direction with Marian Estates to bring back the entire project so the Council can get a feel for before they start making decisions on individual pieces.

Luiz de Araujo introduced himself and his partner Mike Viola as the owners of the Surf Park called "The Point." He shared a PowerPoint Presentation. He stated that they will have the Surf Park along I95, a hotel, along with the pool, a food court between the pool, five hundred parking spaces, an apartment complex with a fire station in between and they will have townhomes and duplex and adog park.

Manager Mathes interjected the commercial outparcels on 512 which have not changed either.

The only change is a rearrangement of the residential and then changing three big box lots into a sports and recreation venue.

Council Member Renick asked what is the total acreage of the development site. Manager Mathes responded the whole site is 392 acres and he estimated about one hundred acres.

Luiz stated that they are super excited with this project that will bring a lot to the community. He wants to involve the county and the city. Imagine going to the ocean where there is no need to deal with sharks. The waves will run along the wall. They will have twenty people that will serve along the wall as intermediate. They will also be teaching people how to surf. Along the wall, they will have their advanced and intermediate zone, which is where they will have the bigger waves. The beginners will be in the middle and that will be more open to the public. There will also be a beach zone where the residents are going to be able to enjoy themselves. The whole park will have a food court, office, retail, a skate park as well for the community. They have major things that they would like to join with the city and the county to be able to bring in events. Special Olympic events are an example of what they would like to be able to host and also surf competitions. They will have the apartment complex and they have joined forces with the Point Grand, the commercial has not changed.

Manager Mathes stated they will have 384 residential units and a hotel with 198 rooms. Luiz added the Surf park, 62 townhome units, 40 duplex units, the fire station, and the dog park.

Manager Mathes reached out to the county on this yesterday, they seem to be excited about it. However, they need to get back to them on whether they can handle the water demand. Although it is not a continuous water demand, it is really just to fill the pool up, it will take forty-four million gallons.

Luis added that it is a massive pool it almost 6 acres.

Manager Mathes stated that they are also talking with the fire district because they are proposing to move the fire station and they are just reaching out to the fire district just to make sure they are okay with that.

Luiz stated he is flexible with moving the Fire Station. He showed an example of the apartments they want to build. They will have dog stations; they will have their own pool separately for the apartment complex, so you do not have to mix with the Surf Park. Manager Mathes stated that the apartments will have their own amenities, their own kid's area, and dog recreation area.

Council Member Renick asked if the Surf Park will be seasonal, and if they plan to use it in the middle of wintertime. Luiz responded it is year-round, they will probably have two weeks downtime, just for maintaining the machines maintain the equipment, but it is a year-round, They do not think the water will go below 58 degrees.

Manager Mathes stated that the Comp plan is cleaning up a little bit of language. The first change relates to some language about where the residential and commercial is going to be. It was referencing exhibits which are no longer appropriate. And to be honest, the residential is in LDMX. Wherever the LDMX Land uses, that is where the residential is going to be. The commercial is going to be on the Rec. Because that is what Rec is, it is commercial. And they do have the ability to do some commercials in LDMX. For the text is just basically referring back to the Land Uses instead of some exhibits that were in the prior annexation agreement, which were carried forward. And they are also asking to get rid of the requirement for green buildings and make it an option for the developer. That would be the Council's call if you want to get on that relief, which is the text change. There is a one deed restriction that they are changing, they are just clarifying that for residential development, they did not feel that we needed deed restrictions on commercial development and so they just clarified that they would need to make sure in the deeds for the residential development that there's reference to Sebastian Park and Fire Range.

Attorney Dill stated that the way it reads now, they are asking that to be changed. The way it reads now is there just has to be a deed restriction, put in the covenants and restrictions in those documents. And it does not say just residential, it says any use on the property. He just thinks it is probably safer for the city to do that because now they will have given full disclosure to everybody. It helps preserve the city's liability to give full disclosure.

Council Member Renick asked what would be the argument for eliminating it from anything other

than the residential.

Manager Mathes stated that would be a question for the applicant Nicholas Font, who was online. He asked if he was comfortable making that for all properties or if he really wants that just for residential.

Nicholas Font stated that he prefers just residential.

Manager Mathes stated that Attorney Warren Dill does make a point prescribed burns, he thinks are a bigger issue than the gun range.

Council Member Renick stated that is something to consider.

Manager Mathes continued to explain the Comp Plan. There is an area that is split between the LDMX, which is the residential and React, which is the commercial. The old Comp Plan, which was a commercial parcel, they were wanting to move the LDMX line off of that parcel over to the parcel line. That entire parcel is under one land use React. That made sense, under the old concept plan, when that was going to be a commercial parcel but now, it is going to be a residential parcel. He has talked to Nicholas and Luis about potentially changing the legal description between now and the public hearing. Instead of it all becoming React, it all becomes LDMX because again, the new concept plan has it as residential, not commercial, the old concept plan, which is when this legal was written, had it as commercial. When the Surf Park came in, they took over all the development north of 93rd Street, which is the parallel road, and they just moved things around a bit. And all their commercial is the Surf Park, they are not having any extra commercial in the residential area, so they do not need to React on the other side of 108th avenue they just needed on the west side. That will come back at a Public Hearing. Instead of going LDMX to React, it is going to go to React to LDMX.

Manager Mathes stated that this is first reading and there are some annexation things that are really parallel in the Comp Plan. basically, a lot of the Comp Plan came from the Annexation Agreement. So, if the Council is changing the Comp Plan, they more than likely are going to have to change the Annexation Agreement. There are no additional issues being approached in the annexation agreement, but they are both comparable in the changes that are being made. He also provided the development agreements; they are pretty far along but are not finalized. He asked the Council if they deny the relief of the green building then he has to make sure he puts that in the Development Agreement.

Council Member Renick asked when the green building standards were implemented and what was the incentive or intent for implementing green building standards. Manager Mathes responded it was in the annexation agreement and then was carried over into the comp plan before 2004. He stated that it was brand new at the time, it was a buzz of planning and they ended up putting it in most all of their large annexations every one of them has it. And it is not much of a buzzword anymore, but it was back then.

Prior to the final hearing of the Comp Plan, they will have to first amend the annexation agreement because the annexation agreements are the higher-level Comp Plan is the second level, then it is the Plan Development. When it comes back, not from the first hearing, but the second hearing after it goes to the state comes back to the city, Council will also have the annexation agreement amendment at that time too.

Council Member Renick asked Mr. Araujo if he or his group had been involved with any other of the other Surf Parks down south. Mr. Araujo stated they have a plan to build one south and also north. The same technology that that would be using for Fellsmere they have built in Texas, and also two in Brazil. There first focus is Fellsmere, but in the future they do have plans to put one down south and another up north. Without that development next to it, they will not be able to put it. That is why the whole development is what comes together so they will be able to afford.

Attorney Warren Dill asked if they would like to clarify the decision regarding the release of the LED and release of the commercial from the deed restriction, so when a document comes back, it is in the form that they want.

Manager Mathes asked the Council that with the green building, did they want to make that an option to the developer or mandate to the developer.

Council Member Renick stated to release it. Council Agreed.

Manager Mathes asked the Council in regard to the deed restrictions, are they okay with just residential or did they want deed restrictions on every property that is sold out there, commercial,

or residential.

Council Member Renick stated that he is curious in the language, a deed restriction, are they just putting in the deed that they may have to deal with those issues.

Attorney Warren Dill stated deed restriction is a generic term, there is going to be a document called Declaration of Covenants, conditions and restrictions or something similar to that, that will be laid on that commercial, there will be restrictions on that commercial, I assure you of that. And there will be restrictions on the residential area, they will be substantially different because one is for residential use and others for commercial use. All he is suggesting is that, as it originally was approved by the Council back when that the restriction on notification of the burns and the gun range be across the board for the whole property. Two Council members agreed for residential and three agreed for Commercial and Residential.

Manager Mathes stated that they will be removing from number 12, the underline and take it back and the Council is not going to be supporting that particular change.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Renick **SECONDED** by Council Member Herrera to approve the 1st Reading and set the 2nd Reading and Public Hearing for February 1st, 2024, for Resolution No. 2024-01 with the two changes.

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

**PowerPoint Presentation is attached.*

- (k) **Approval** of Professional Services Agreement with "A Walk in the Past Productions" and "Applied Webology FL, LLC."

Manager Mathes talked about this award at the last City Council meeting, and they said they would bring back a contract to this meeting. This is for a Walking Tour production both hardcopy and modern electronic Walking Tour version. He thinks they have a good strong team.

Mayor Tyson asked how much is it going to cost. Manager Mathes stated \$50,000, he added there might be a little bit of additional work but \$50,000 is the contract that is funded entirely by grant funds.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Salgado **SECONDED** by Council Member Hernandez to approve the Professional Services Agreement with "A Walk in the Past Productions" and "Applied Webology FL, LLC."

ALL AYES

MOTION CARRIED 5-0

13. ADJOURNMENT:

There being no further business Mayor Tyson adjourned the meeting at 9:03p.m.

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

Maria F. Suarez-Sanchez, CMC, City Clerk
CO20240104MINUTES.DOC

THE POINT

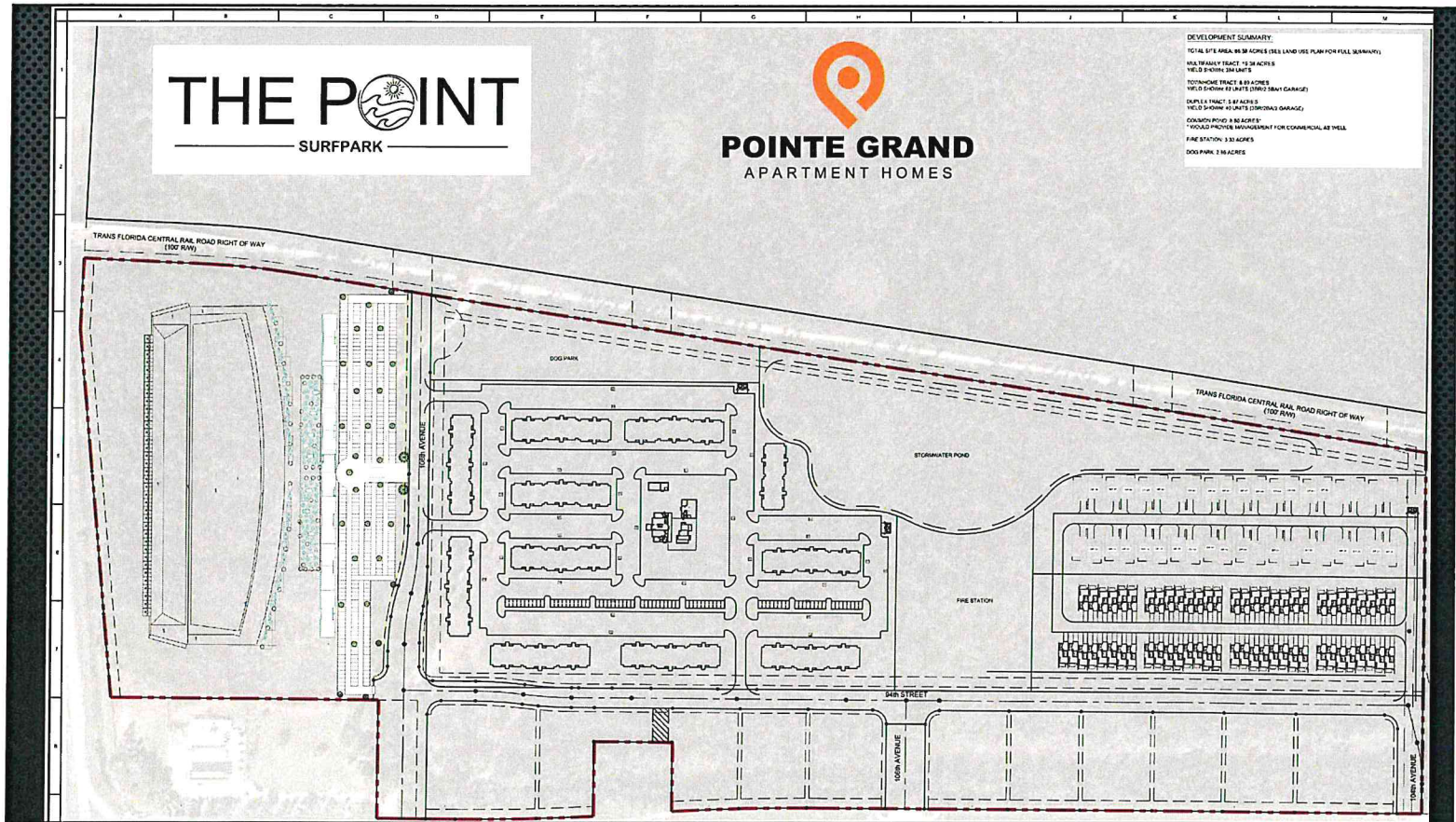
SURFPARK



POINTE GRAND

APARTMENT HOMES

DEVELOPMENT SUMMARY:
 TOTAL SITE AREA: 86.38 ACRES (SEE LAND USE PLAN FOR FULL SUMMARY)
 MULTIFAMILY TRACT: 15.38 ACRES
 YIELD: 300-350 UNITS
 TOTINOCHIE TRACT: 8.89 ACRES
 YIELD: 300-350 UNITS (300-350 UNIT GARAGE)
 DUPLEX TRACT: 5.81 ACRES
 YIELD: 30-40 UNITS (30-40 UNIT GARAGE)
 COMMON POND: 9.80 ACRES
 *HOUSEPONDING ENVIRONMENT FOR COMMERCIAL AS WELL
 FIRE STATION: 3.33 ACRES
 DOG PARK: 1.84 ACRES



THE POINT
SURFPARK

CITY OF FELLSMERE, FL



IMAGINE SURFING PERFECT WAVES EVERYDAY WITHOUT WAITING FOR A SWELL, TIDES OR CROWDS.



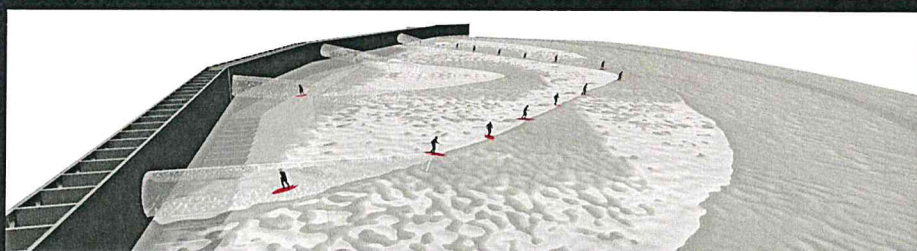
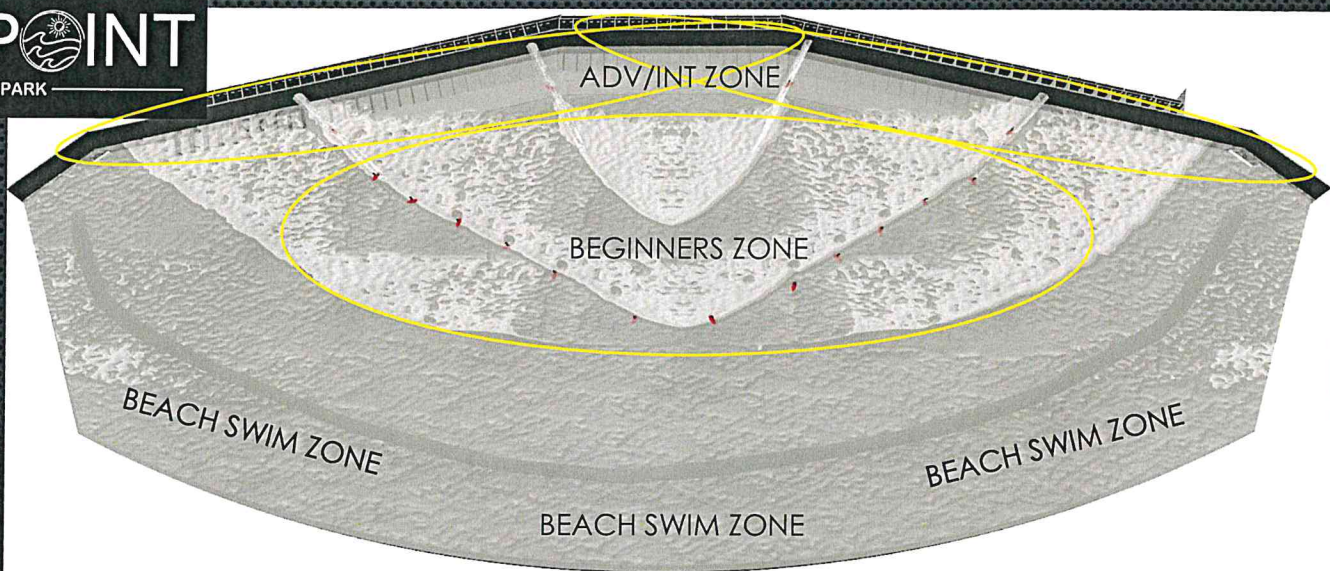
THE POINT
SURFPARK



ELIMINATING ALL DANGERS OF THE OCEAN, MARINE LIFE AND RIP CURRENTS. ENJOY YOUR BEACH DAY IN A SAFE CONTROLLED ENVIRONMENT.

THE POINT

SURFPARK



THE POINT

SURFPARK

ADVANCED AND INTERMEDIATE SESSIONS PROVIDE LONG WAVES FOR FUN TURNS.
BEGINNER SESSIONS WILL OFFER GENTLE AND FUN WAVES FOR ALL AGES.



PHASE 1 DEVELOPMENT

- WAVEPOOL
- FOOD COURTYARD
- PARKING LOT
- BEACH AREA (CABANA AND CHAIRS)
- SWIM SLASH ZONE
- 4000 SQ FT WELCOME CENTER
- SHOPS AND SURFSHOP
- POOLSIDE BATH/LOCKER ROOMS

PHASE 2 DEVELOPMENT FINAL

- 2 HOTELS ON-SITE
- RESTAURANT
- SKATE PARK



SPECIAL EVENTS

THE POINT SURFPARK is in the process of organizing events to host at the facility that will greatly benefit the local community such as:

- Local Surf Competitions
- International Board Riders Club Surf Competitions
- SPECIAL OLYMPICS Surf Competitions
- Creation of a WAVE POOL LEAGUE to compete with other wave pools around the world.
- Surf Movie Nights
- Christmas Tree Lighting Surf Events
- New Year's Eve COUNTDOWN Surf Events
- 4th of July Celebration and Surf Events
- Halloween Surf Events including trunk or treating, costume contests, and costume surfing (a safe place for the local kids to celebrate)

Celebration of mostly all the holidays, the ideas and opportunities are endless!!!

FELLSMERE RESIDENTS

All Fellsmere residents will receive the following:

- Discounted rates on surf session purchases and park entrance fees
- Advanced ticket purchase options for surfing and beach day passes
- Discounted rates on surfboard rentals and in-park purchases
- Discounted rates on "Learn to Surf" programs
- FREE "Learn to Surf" youth program (MAX 20 children per class, available weekly)
- FREE youth water safety training classes (available monthly)



SURFPARK

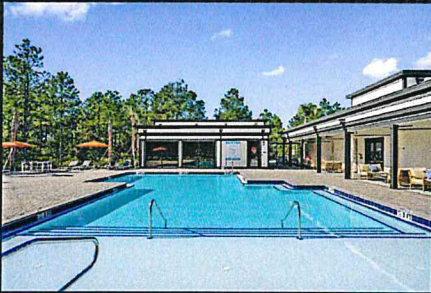
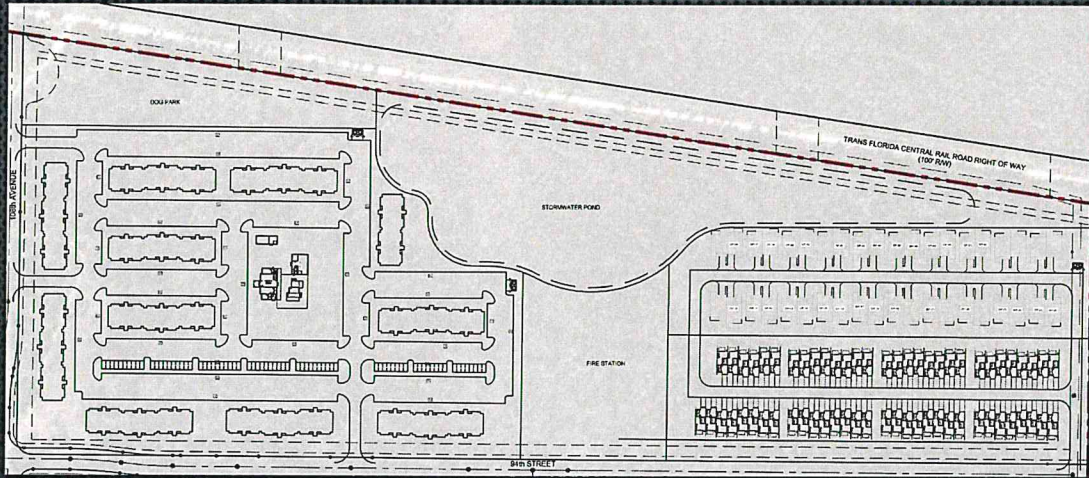


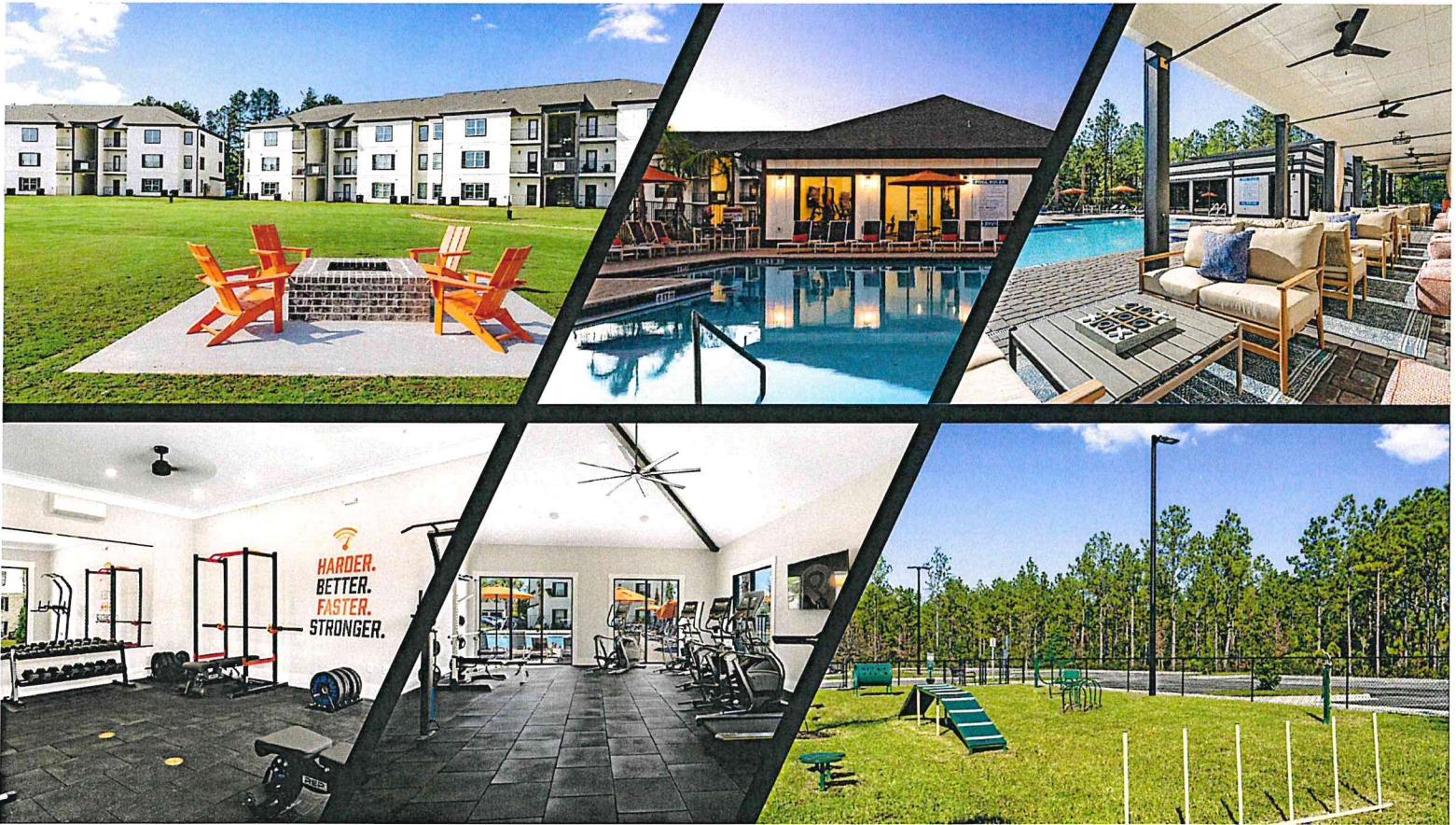
POINTE GRAND

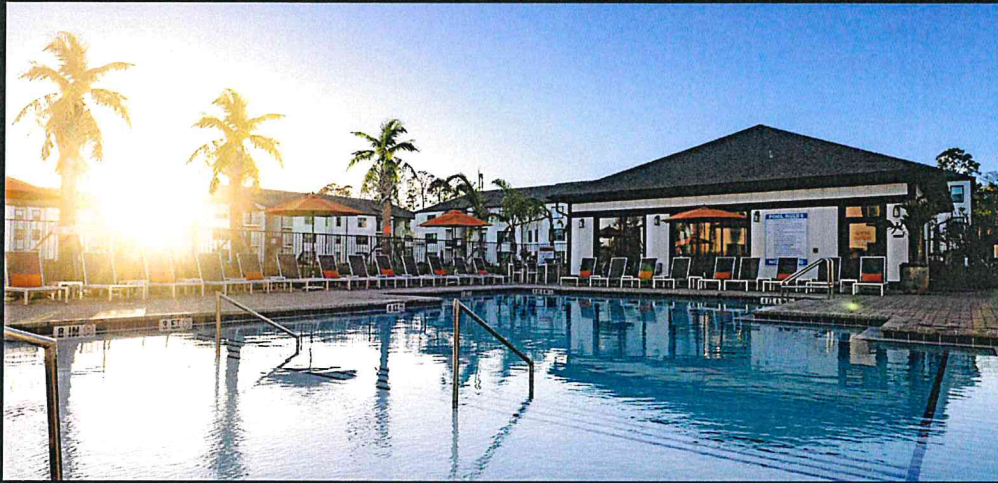
APARTMENT HOMES



- WAVEPOOL
- 2 HOTELS ON-SITE
- RESTAURANTS
- SKATE PARK
- MULTIFAMILY TRACT: 19.38 ACRES YIELD SHOWN: 384 UNITS
- TOWNHOME TRACT: 6.89 ACRES YIELD SHOWN: 62 UNITS (3BR/2.5BA/1 GARAGE)
- DUPLEX TRACT: 5.87 ACRES YIELD SHOWN: 40 UNITS (3BR/2BA/2 GARAGE)
- FIRE STATION: 3.33 ACRES
- DOG PARK: 2.96 ACRES







THANK YOU

THE P  INT

— SURFPARK —



POINTE GRAND
APARTMENT HOMES

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: January 4, 2024

Agenda Item No. 6(a)

- | | |
|--|---|
| <input checked="" 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 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: Continue 2nd reading and first public hearing for February 15, 2024

Approved by City Manager Mark Mathes **Date:** 01/25/24

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

Formatted: Tab stops: 5.94", Left

Formatted: Space Before: 0 pt, After: 0 pt

Formatted: Centered, Space Before: 0 pt, After: 0 pt

12.18.22

Formatted: Tab stops: 5.94", Left

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]: Deleted 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. KEMMERSON	DATE: 02/10/2023	FIELD BOOK/PAGES: 1/1	DATE: 02/10/2023	SHEET: 1 OF 1	SCALE: 1"=5000'	DRAWN BY: R. KEMMERSON	CHECKED BY: R. KEMMERSON	APPROVED BY: R. KEMMERSON	CITY OF FELLSMERE	PROPOSED ZONING MODIFICATION	SKETCH AND LEGAL DESCRIPTION		VELCON ENGINEERING & SURVEYING, LLC CERTIFICATE OF AUTHORIZATION NO. LB 8204 3901 NW PEACOCK BLVD. SUITE 8 FORT MYERS, FLORIDA 34104 PHONE (772) 679-0477 Web Site: www.velcon1.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

SCALE 1" = 1000'

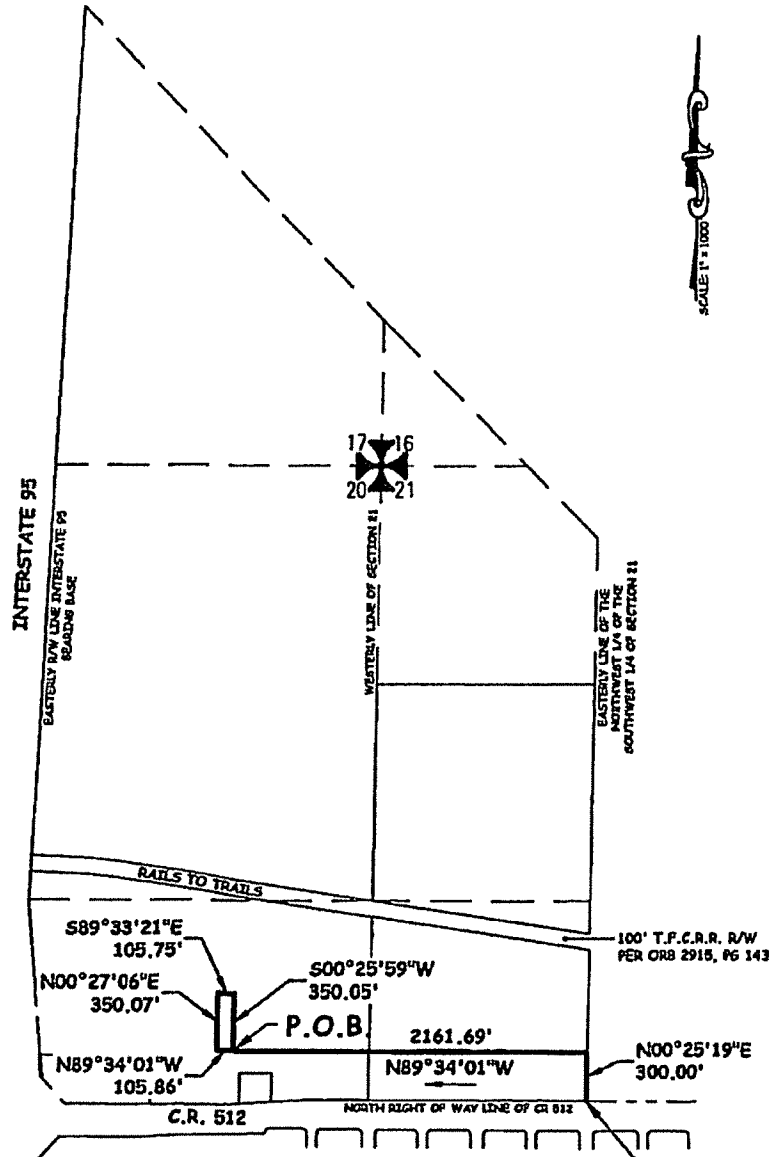


EXHIBIT "B"
 PAGE 2 OF 2

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 # 19-3755.

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
	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. LA 8204
 890 NW PEACOCK BLVD., SUITE B
 FORT ST. LUCIE, FLORIDA 34986
 PHONE (772) 879-0477
 Web Site: www.velconllc.com

Project No. 04-082 - Fallsmere 3241 Unimproved GMA (Nearest REAC) - Section 21, Township 21S, Range 36E, Indian River County, Florida. Feb 21, 2007 - 4:01 PM

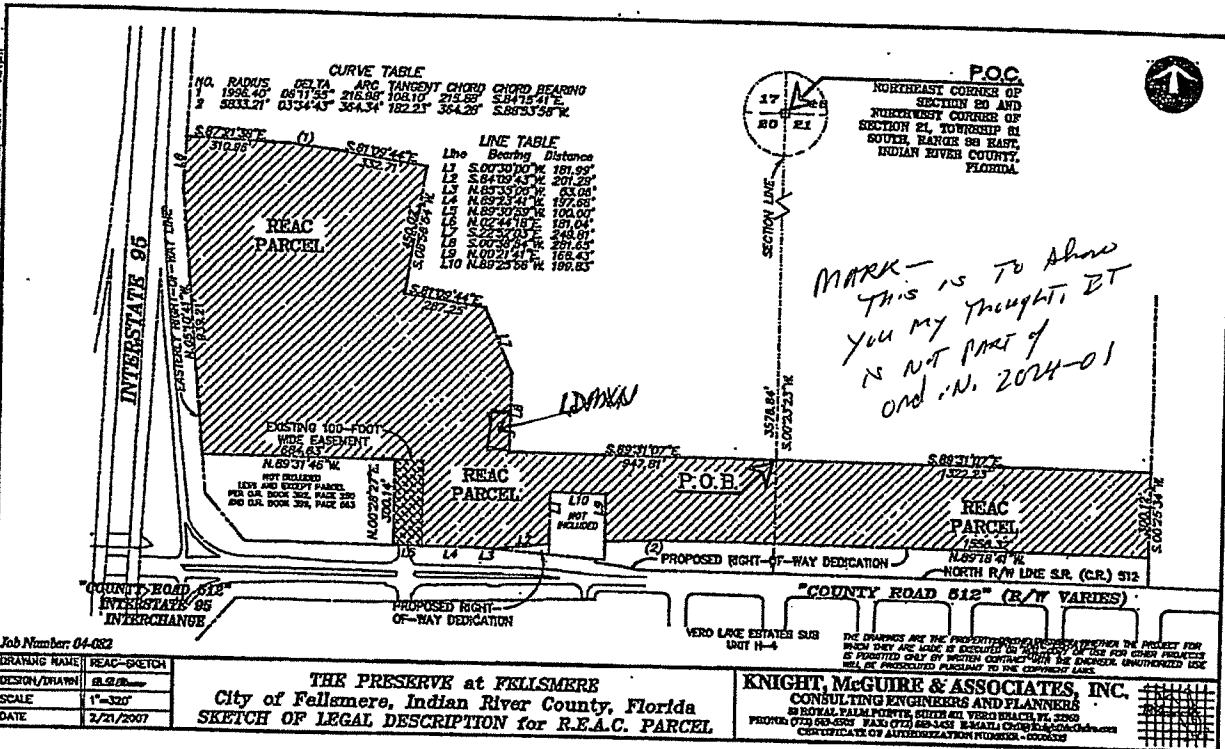


Exhibit "D" to Ordinance NO. 07-07

**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 Lumberyards²

Car wash establishments¹

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

ATTEST:

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: _____

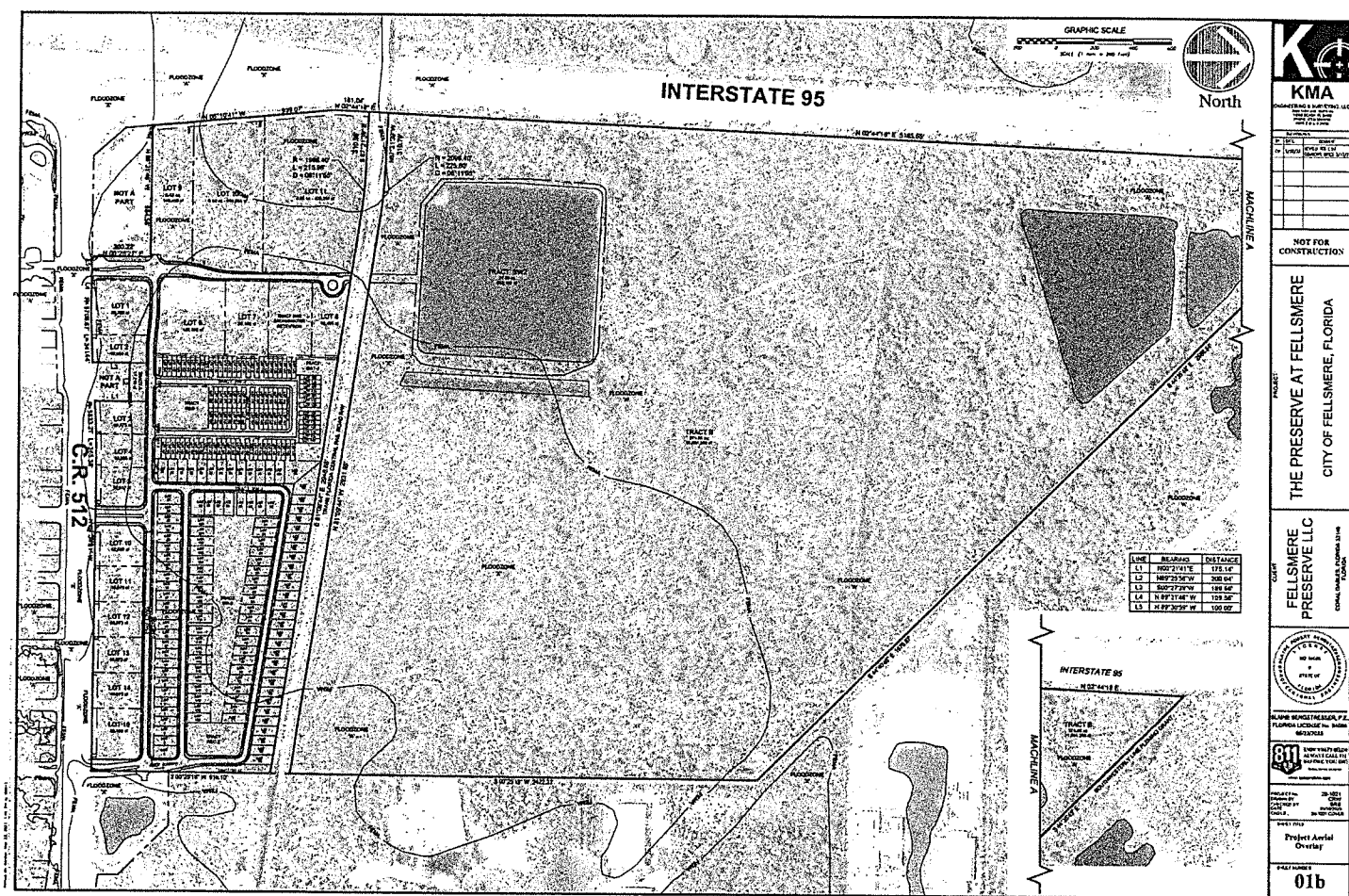
Print Name: _____

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 _____



**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: January 4, 2024

Agenda item#: 6(b)

☒ 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: Final Development Plan (FDP) approval to allow for outdoor storage and wholesaling in addition to existing residential and retail uses on site.

RECOMMENDED MOTION/ACTION: Continue 2nd reading and public hearing for February 15, 2024.

Approved by City Manager Mark Mathes **Date:** 01/25/24

Originating Department: Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments: CC Reso #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 ____ (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 a 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 permanently 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 2024-02 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(l)(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(B0(1)(b) Deferral from requirement 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 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 dut to future construction. The City will procure, install, and maintain the required trees at a later date. Payment hall 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.

FUTURE ALLEYWAY- CONNECTORS
TO BE BUILT BY CITY TBD

MARSH LANDING RESTAURANT

EXISTING TREE TO REMAIN

PHASE 3

N. BROADWAY STREET

SITE DATA

ADDRESS: 30 NORTH BROADWAY
ZONING: OLD TOWN OVERLAY DISTRICT (OTD)
ACREAGE: 0.48 ACRES (20,906 SQ. FT.)
EXISTING BUILDINGS = 3,844 SQ. FT. (18,480)
PHASE I (1003 TRUCK PAD, CONC WALK, NEW PARKING, EXIST PATIO CONV.) = 762,826 SQ. FT. (34,943)
PHASE II (NEW FRONT PAD, DRIVEWAY AND REAR PARKING) = 2,688,753 SQ. FT. (122,830)
PHASE III (GARAGE) AND ADDITIONAL SIDEWALK AREA = 747 SQ. FT. (3,382)
TOTAL IMPROVABLE AREA AT BUILD OUT COMPLETION = 14,818,223 7116 (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.

PROPOSED	REQUIRED
LOT WIDTH 100'	50'-4" MIN.
FRONT SETBACK 16'	8'-3" FEET
SIDE SETBACK 5'	8' OR 25'
REAR SETBACK 5'	6' OR EQUIV TO 5'
BUILDING LENGTH 62'	LESS THAN 200'
MAX HEIGHT 1 STORY	3 STORIES MAX. HT.
MAX COVERAGE 65%	100% ALLOWED
MAX SITE 2000 SQFT.	UP TO 20,000 ALLOWED
FLOOR AREA RATIO 1	UP TO 2.0 ALLOWED
MIN. UNIT SIZE 2000SQFT	500 SQ. FEET MINIMUM

FRUITERIA NUNO DEVELOPMENT PLAN
32 N. BROADWAY

	FINAL DEVELOPMENT PLAN	
No.	Revision/Issue	Date

Page 10 of 10

related time and effort

W. A. BOWMAN
TALLAHASSEE, FL 32304

1992

DOPT 9, BNC2

100

A-1

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

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 Grantee's 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.: _____

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: _____
 Printed 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: February 1, 2024

Agenda Item No. **6(c)**

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

SUBJECT: 208 S. Mulberry Street Public Hearing to Dispose of Property

RECOMMENDED MOTION/ACTION: Conduct Public Hearing and authorize Mayor to dispose of 208 S. Mulberry Street for the offer price.

Approved by City Manager *Mark [Signature]* **Date:** 1-24-24

Originating Department:	Costs: \$ 2,500.00 (offer) Funding Source: Acct. #	Attachments: Offer Deed of Conveyance Unity of Title
Department Review: <input checked="" 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 <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:

Staff is requesting City Council authorize the sale of 208 S. Mulberry Street with the adjacent owner to the north. The property consists of a 25' wide vacant lot. Due to errors by the survey layout of the adjacent home at 204 S. Mulberry Street, improvements on this adjacent lot encroach upon 208 S. Mulberry owned by the City. The lot is unbuildable due to size. The sale has been advertised as required and only one offer was received from the adjacent owner. There was no minimum bid amount for this property. The only offer received was from this adjacent owner for \$2,500.00.



**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):

Lot 19, Block 29, Town of Fellsmere, according to the map or plat thereof as recorded in Plat Book 2, Page 3, Public Records of Indian River County, Florida.

And

Lots S, T, and U, Block 29, Replat of a part of Town of Fellsmere according to the plat thereof as recorded in Plat Book 8, Page(s) 5, Public Records of Indian River County, Florida.

Also known as 208 South Mulberry Street, 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 _____, 202_.

NAME(S) OF ALL OWNER(S): Catalina Rojas and Daniel A. Carrillo

MAILING ADDRESS: P.O. Box 511, Fellsmere, Florida 32948

Signed and sealed in the presence of the following witnesses:

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

Signature of Owner: _____
Print Name: Catalina Rojas

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

Signature of Owner: _____
Print Name: Daniel A. Carrillo

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me on this ____ day of _____, 202__ by means of ☐ physical presence or ☐ online notarization, by Catalina Rojas and Daniel A. Carrillo, who are personally known to me or whom has produced _____ as identification.

SEAL

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

Declaration of Unity of Title
Page 2 of 2

SALE: NONE
DOC. STAMPS:

This Instrument was prepared by
and should be returned to:
D. Johnathan Rhodeback, Esq.
Dill, Evans & Rhodeback
1565 U.S. Highway 1
Sebastian, FL 32958

Parcel ID No.:

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

QUITCLAIM DEED

This Quitclaim Deed, executed this ____ day of _____, 202_, from the **CITY OF FELLSMERE, FLORIDA**, a municipal corporation created pursuant to the laws of the State of Florida, whose address is 22 S. Orange Street, Fellsmere, FL 32948, hereinafter referred to as "Grantor", to Catalina Rojas and Daniel A. Carrillo, whose address is P.O. Box 511, Fellsmere FL 32948, hereinafter referred to as "Grantee".

Witnesseth, That the 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 the said Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said Grantee and Grantee's heirs and assigns forever, all the right, title, interest, claim and demand which the Grantor has in and to the following described land, situate, lying and being in the County of Indian River, State of Florida, to-wit:

Lot 19, Block 29, Town of Fellsmere, according to the map or plat thereof as recorded in Plat Book 2, Page 3, Public Records of Indian River County, Florida.

See Exhibit "A" attached hereto and by reference made a part hereof.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

AND FURTHER SUBJECT TO governmental regulations, covenants, right 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.

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

SUBSEQUENT TRANSFER, SALE AND CONVEYANCE – The City has determined that the subject real property is selling for less than fair market value. Therefore, in accordance with Section 2-277(a)(2)c. of the Land Development Code, the City shall receive ten percent (10%) of the gross proceeds simultaneously with the closing from the next bona-fide transfer, sale or conveyance of the property. The City in its sole discretion shall determine whether the sale price is bona-fide.

Signed, sealed and delivered
in our presence:

WITNESSES:

CITY OF FELLSMERE

Sign: _____

Print: _____

Address: _____

Joel Tyson, Mayor

Sign: _____

Print: _____

Address: _____

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, on behalf of City of Fellsmere, Florida, a municipal corporation, who is ☐ personally known to me or ☐ has produced as identification.

"SEAL"

Notary Public, State of Florida

NOTICE

In preparation of this instrument, the scrivener has not examined title to the described property and makes no warranty, representation or opinion, either express or implied as to the title, quantity or boundaries of the property or the existence of any liens, unpaid taxes, or other encumbrances.



AERIAL PHOTOGRAPH
(MAY NOT SHOW LATEST IMPROVEMENTS)
(NOT-TO-SCALE)

SOUTH MULBERRY STREET (FIELD)

ASPHALT ROADWAY 150' RIGHT-OF-WAY
500' 21' 00" 365.00' 07"

POINT OF INTERSECTION

CP = CONTROLLING POINT (POINT OF ROTATION) HFA = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

PLATTED EASEMENTS & NOTABLE CONDITIONS (unplatted easements also listed if provided); IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN AND THEIR RELATIONSHIP TO THE BOUNDARY LINE.

ADJINERS BUILDING CROSSES THE BOUNDARY LINE ON NORTHERLY SIDE OF LOT AS SHOWN.

This survey has been issued by the following
Landtec Surveying office:
700 West Hillsboro Boulevard, Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587
Fax: (561) 465-3145
www.Landtecsurvey.com

Elevations, if shown:

Revisions:

Benchmark

Benchmark Elev:

Benchmark Data:

Elevations on Drawing are inc

NGVD.29 ☐ NAVD.88

**BEARING REFERENCE:
CENTER LINE OF SOUTH MULBERRY STREET
AS S 00°21'00" E ALL BEARINGS
SHOWN HEREON REFERENCED THERETO.**

Job Number: 181280-GE

Date of Field Work 02/27/2008

Drawn by: ML JL

LANDTEC
SURVEYING
and: Lien

LICENSED BUSINESS No. 8501

Letter of Intent To Purchase Property

Danielle Carrillo
206 S Mulberry St
Fellsmere, FL 32948

To

City of Fellsmere Clerk's Office
22 S Orange St
Fellsmere, FL 32948

01/14/2024

Subject: Lot(s) 19, Block 29, Town of Fellsmere, according to the map or plat thereof as recorded in Plat Book 2, Page 3, Public Records of Indian River County, FL. Also known as: 208 South Mulberry Street, Fellsmere, Florida 32948

To whom it may concern,

Please accept this letter as intent to purchase property located at Lot(s) 19, Block 29, Town of Fellsmere, according to the map or plat thereof as recorded in Plat Book 2, Page 3, Public Records of Indian River County, FL. Also known as: 208 South Mulberry Street, Fellsmere, Florida 32948. I have owned the adjacent property located at 206 S Mulberry St., Fellsmere, FL 32948 since April 1, 1998. Furthermore, I have developed the property and have a standing structure attached to my home. I filed for the propriate permits to build the current structure and were approved by the City of Fellsmere on March 27, 2007.

In addition, selling the property to a different entity would cause a financial burden to remove the structure and it would drastically impact my current living arrangements.

Please accept my offer of \$2,500.00 USD into consideration.

Sincerely,


Daniel Carrillo

772-925-6339



FELLSMERE POLICE DEPARTMENT

December 2023

	Monthly Total	Annual Total	Monthly Average
911 Hangup/Open line	18	71	23.67
Alarm	4	20	6.67
Animal Incident	3	8	2.67
Area Check	445	1439	479.67
Assault	0	0	0.00
Assist	36	89	29.67
ATV/Dirt Bike	3	6	2.00
Burglary Auto	0	2	0.67
Burglary Residence	1	1	0.33
Burglary Business	1	2	0.67
CFS Fax	2	5	1.67
Civil	4	14	4.67
Crash Report	7	18	6.00
Criminal Mischief	1	2	0.67
DAV/Traffic Hazard	0	0	0.00
Death	0	0	0.00
Disturbance	10	28	9.33
Drug Incident	1	3	1.00
Follow Up	13	39	13.00
Found Property	1	1	0.33
Fraud	1	2	0.67
Larceny	0	1	0.33
Liquor Violation	0	0	0.00
Lost Property	0	0	0.00
Miscellaneous	63	207	69.00
Motor Vehicle Theft	0	0	0.00
Noise Disturbance	11	26	8.67
Parking Violation	0	7	2.33
Recovered Stolen Vehicle	0	0	0.00
Robbery	0	0	0.00
Runaway/Missing	1	3	1.00
Search	3	6	2.00
Shoplifting	0	1	0.33
Suspicious Incident	7	33	11.00
Suspicious Person	3	10	3.33
Traffic Incident	15	64	21.33
Transport	0	5	1.67
Trespass	2	8	2.67
TOT	4	11	3.67
Verbal Warning	12	61	20.33
Warrant Arrest	0	2	0.67
Training	5	16	5.33
CommendationAwards	0	0	0.00

TRAINING:

Invest Interview - 6hrs

Ofc. Jones

Discriminatory Profiling - 2hrs

Chief Touchberry

Treasure Coast Intervention-40hrs

Ofc. Jones

Ofc. Cortes-Guzman

FCIC/NCIC Training - 2hrs

Chief Touchberry

Respectfully Submitted,

Keith Touchberry
Chief Keith Touchberry
Date: 1.3.24

APPLICATION FOR APPOINTMENTDate: 1-22-24Board, Commission or
Committee Requested:MPO Citizen Advisory
CommitteeName: Ben Baker

Indian River County Yes No

Registered Voter (☒) ()Address: 240 S. CypressFellsmere, FL 32948City Resident Yes No
(☒) ()How long? 39 yrs Years/MonthsTelephone: 772-571-7885

Home

Work

Name(s) of relatives presently employed by the City of Fellsmere or serving on an Advisory Committee:

noneBrief statement as to why you wish to serve: I would like to serve
my communityEducation: High School Graduate? Yes ☒ No ☐College/UniversityAddressMajorDegreePresent Occupation Front lot Crew leader for I.R.C

Prior Occupation: _____

Spouse's Occupation: _____

Business experience you feel may be applicable :

OrganizationAddressTitle/DutiesRoad work

References:

NameAddressTelephoneJoel TysonSusan Adams

Licenses held: (F.C.C., etc.) _____

COMMAPL.DOC

dck 07-12-01

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: February 1, 2024

Agenda Item No. 13(a)

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> Ordinance on Second Reading | <input type="checkbox"/> DISCUSSION |
| <input type="checkbox"/> Public Hearing | |
| <input checked="" type="checkbox"/> ORDINANCE ON FIRST READING | <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 March 7, 2024.

Approved by City Manager *Marian Motte* **Date:** 1-24-24

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.

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 ~~seventy-seven~~ twenty-one one-hundredths (8.7721) acres with CR512 frontage as Neighborhood Center.

3. The Owner/Developer shall limit the density to a maximum of 4.5871 units per acre in order to achieve a maximum of three hundred and ~~twenty~~ thirty-two (32032) 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 ~~seventy-seven~~ twenty-one one-hundredths (8.7621) 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 2020 Objective FLUE B-2.15 ~~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 ~~first 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, left turn and right turn lanes and other improvements related to the Myrtle Street/CR512 Intersection set forth in the letter dated July 25, 2012 attached hereto as Exhibit "B" 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 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 ~~left turn and right turn lanes~~ required improvements. The ~~turn lanes~~ 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 ~~seventy-seven~~ twenty-one one-hundredths (8.~~76~~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 ~~the date Ordinance No. 06-26 was passed on second and final reading by 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~~ 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 ~~building permits~~ 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 ~~two (2) twelve thousand square foot (12,000sq.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 Owner's Policy of Title Insurance to the City for the two lots 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:

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

By: _____
Joel Tyson, Mayor

Witnesses:

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

Witnesses:

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, ±

**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 Mills Short & Associates 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;
- Clubs and lodges;
- Cultural or Civic Facility/Building or Use; Community Center Building;
- Home Based Business as set forth 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 332 residential units within the areas designated as residential comprised of 227 ____ single-family units and 105 multifamily units. Furthermore, 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 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 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 site construction 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: 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

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 [REDACTED]. 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 Sections 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, as set forth in Section 7.22, LDC, the Owner/Developer shall pay into the City's Recreation Trust Fund an amount equivalent to the value 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. 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. In lieu of providing amenities at the southern lake to allow such lake to be credited toward Common Open Space, the Owner/Developer shall contribute \$40,000 to the City within 90 days of approval of this Development Agreement to allow the City to construct an amenity at the Senior League Park adjacent to the southern lake.

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	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 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 <u>final development site construction</u> plan
5. <u>Section 3.21.G.6 Common Open Space</u>	<u>Fee in lieu of providing gazebo, overlook, boardwalk, dock or pier w/ lake</u>

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 and right turn lanes and other improvements related to the Myrtle Street/CR512 Intersection set forth in the letter dated July 25, 2012 attached hereto as Exhibit "B". ~~left turn lanes at CR512 and Myrtle.~~ In lieu of installation of the ~~left turn lanes 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 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 align~~^{to} North Myrtle Street ~~with Babcock Street~~ as set forth in the letter from Indian River County dated July 25, 2012 attached hereto as Exhibit "B". 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 ~~1280th~~ residential ~~building permit~~^{certificate of occupancy} 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~~ 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 including four (4) thru lanes at Willow and Myrtle (transition to three (3) lanes as soon as possible) in accordance with the schedule as set forth below.

Design/Permitting at 50th Building Permit

Start of Construction at 200th Building Permit

Road Completed Prior to Completion of 320th Building Permit

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-eight (85)~~ foot wide sidewalk along the ~~west-south~~ side of ~~South Myrtle Street from~~ CR512 ~~from Project's eastern driveway to the existing sidewalk on CR512 east of the Project, to Massachusetts Avenue prior to the issuance of the first Certificate of Occupancy for the Development no later than fourteen (14) months from the issuance of the final first residential 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 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 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: _____

**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 ~~4.58~~ 4.71 dwelling units per acre in order to achieve a maximum of Three Hundred ~~Twenty~~ Thirty-Two (332) residential units (~~452~~105 town homes and ~~468~~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 ~~Seventy-seven Twenty-One~~ One Hundredths (~~8.77~~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 ~~Myrtle Street~~ 141st Avenue and those properties that contain corner frontage with CR 512 and ~~Myrtle Street~~ 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.

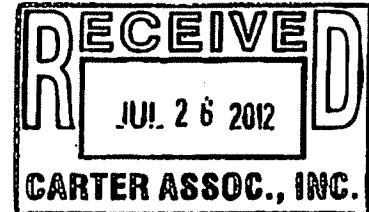


Board of County Commissioners

1801 27th Street
Vero Beach, Florida 32960
Telephone: (772) 567-8000
FAX: 772-778-9391

July 25, 2012

Carter Associates, Inc.
1708 21st Street
Vero Beach, Florida 32960



Attention: Mr. George Simons, P.E.

Subject: ✓ Myrtle Street (from CR512 to South Carolina Avenue)
City of Fellsmere, Florida

Dear Mr. Simons:

Indian River County Public Works Department has reviewed the construction plans, dated June 16, 2011, and As Buils, dated March 26, 2012, for the subject project with regards to the County taking ownership of this roadway as a connection to Babcock Street. The following comments are provided for your review:

1. Typical Section
 - A. 1 ½" asphaltic concrete SP-12.5 was provided on the roadway. A minimum 1" layer of asphaltic concrete SP-9.5 is required.
 - B. 8' shoulders (4' paved and 4' stabilized) are required for a Collector Roadway.
 - C. Clear zone for a Collector Roadway less than 40 mph is 10' from the travel lane. It appears that the existing oak trees and bollards are within the clear zone for Collector Roadway and must be removed.
2. Left turn lanes on all 4 approaches at CR512 and Myrtle Street are required.
3. Traffic signal at CR512 and Myrtle Street is required.
4. Intersection of CR512 and Myrtle Street will need to be plateaued when traffic signal is installed.
5. Myrtle Street should be aligned north of South Carolina Avenue to connect to Babcock Street and avoid jog at South Carolina Avenue. This will require right-of-way acquisition from the parcel at the northwest corner of Myrtle Street/South Carolina Avenue/Babcock Street area.
6. It appears that the 66" RCP constructed at F.W.C.D. Ditch 14 may have clear zone issues on the east side.

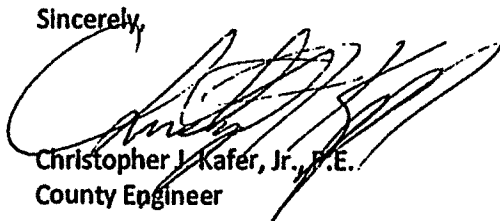
EXHIBIT "B"
TO
FIRST AMENDMENT
TO
ANNEXATION AGREEMENT

Page Two
Carter Associates, Inc.
July 25, 2012

7. Attached is a memorandum from the Indian River County Traffic Engineering Division dated July 24, 2012 with additional comments.

If you have any questions, please contact me at (772) 226-1221.

Sincerely,



Christopher J. Kafer, Jr., P.E.
County Engineer

CJK/jmw


cc: Christopher R. Mora, P.E., Public Works Director
Jeanne Bresett, Traffic Analyst
File

EXHIBIT "B"
TO
FIRST AMENDMENT
TO
ANNEXATION AGREEMENT



**INDIAN RIVER COUNTY
TRAFFIC ENGINEERING DIVISION
MEMORANDUM**

TO: Christopher J. Kafer, P.E.
County Engineer

FROM: Jeanne Breseff 
Traffic Analyst

SUBJECT: Proposed Myrtle Street Improvements – City of Fellsmere

DATE: July 24, 2012

Traffic Engineering staff reviewed the plans for the above referenced project and offers the following comments:

1. Centerlines and edge lines are required to be a minimum six inches (6") in accordance with the Manual on Uniform Traffic Control Devices.

If you have any questions, please contact me at 226-1326.

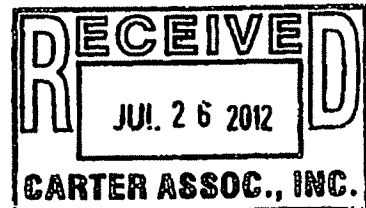
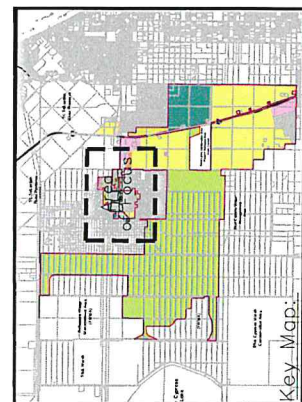
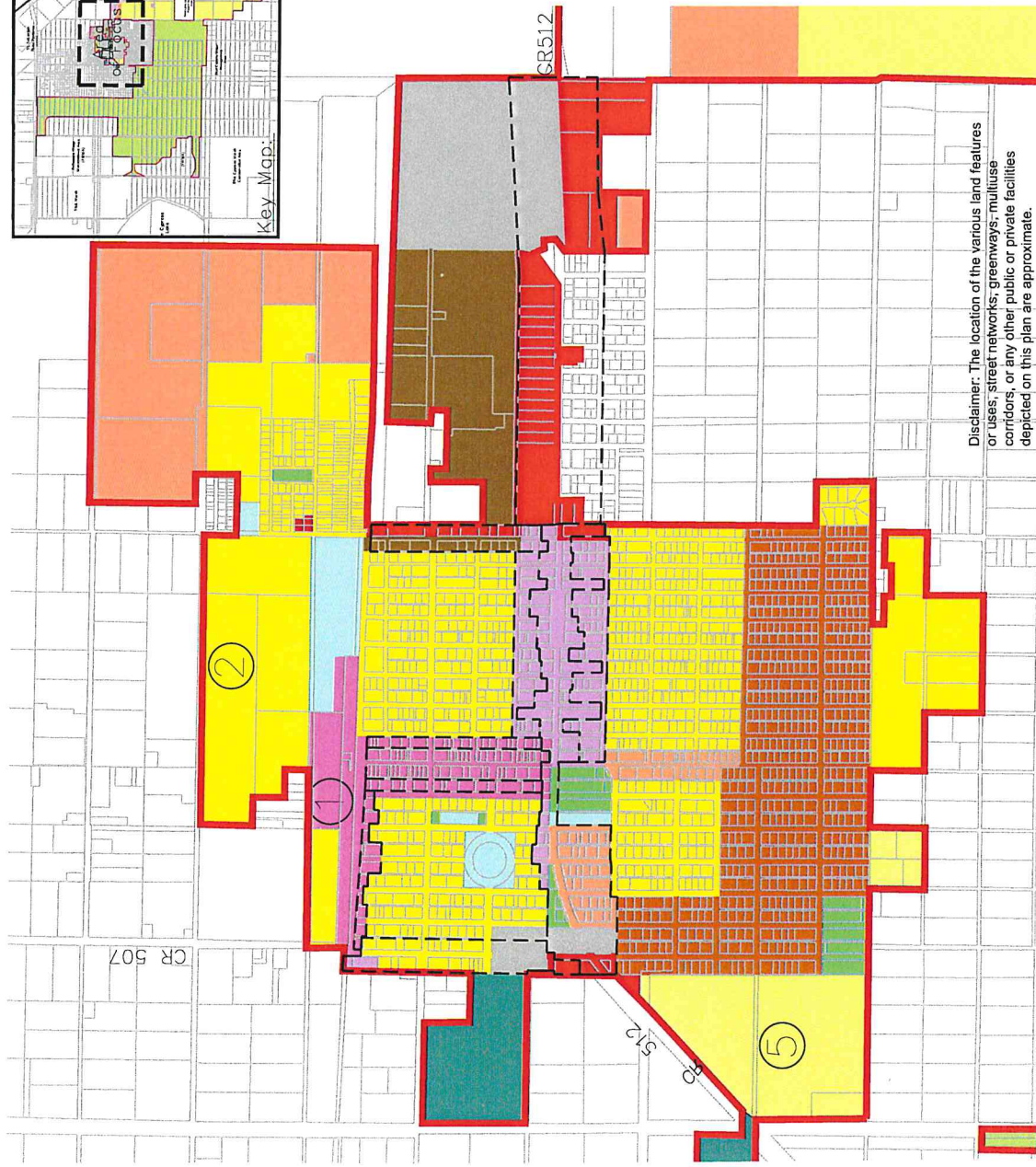


EXHIBIT "B"
TO
FIRST AMENDMENT
TO
ANNEXATION AGREEMENT



- 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, LDMXN, 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



Lucido & associates
701 E Ocean Blvd., Stuart, Florida 34954
(772) 220-2100 • Fax (772) 223-0220

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

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

Ord 2023-33



Future Land Use Map

Figure 1-1C



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

CURRENT DESIGN:

SINGLE FAMILY LOTS
47 LOTS = 178 UNITS
57 LOTS = 178 UNITS

TOWN HOME = 102 UNITS

TOTAL = 352 UNITS

DENSITY = 332 UNITS / 78.77 A

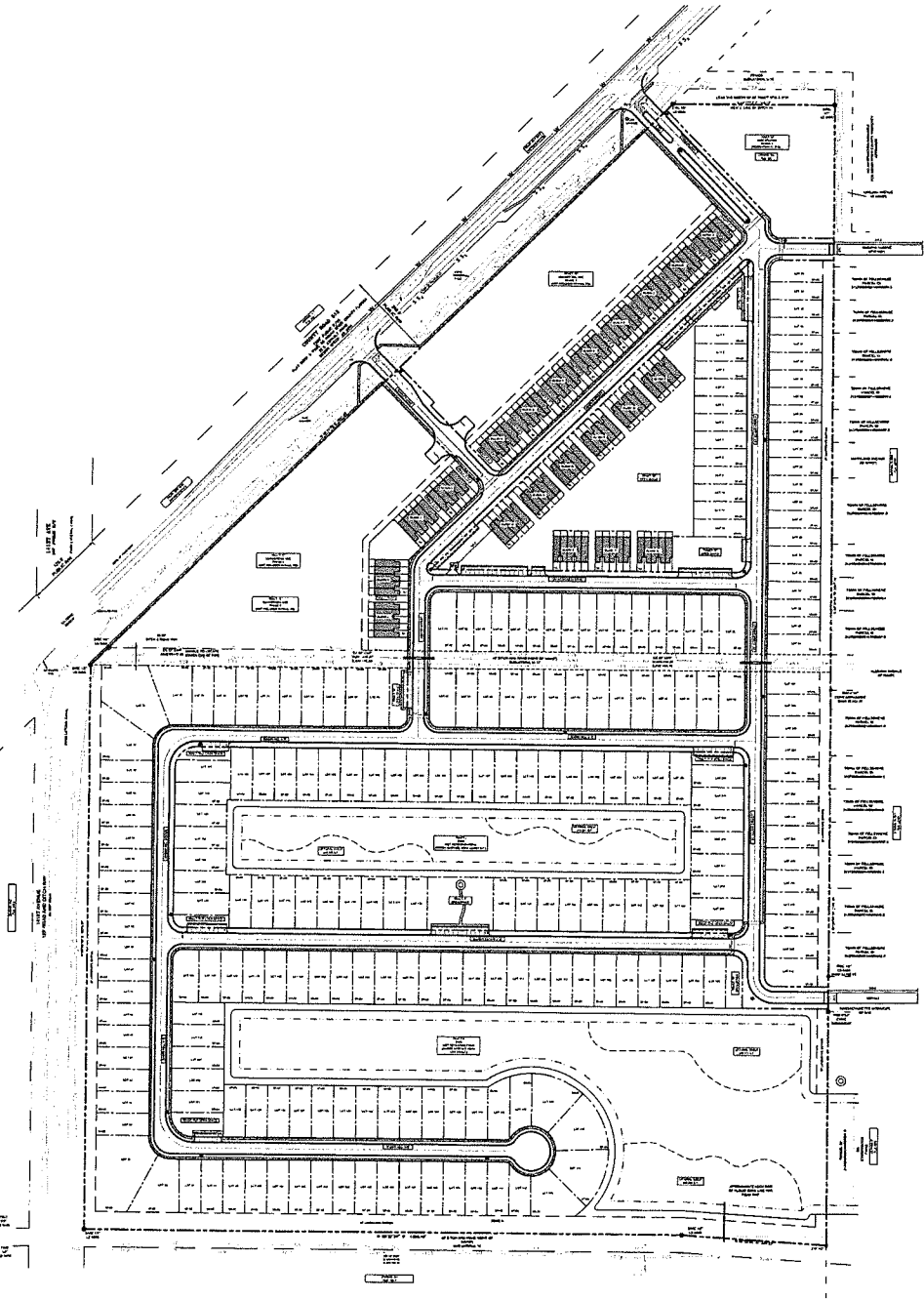
REQUIRED PARKING
DETACHED SINGLE FAMILY
2.3 SPACES PER DU
227 ± 2.3 = 454 SPACES

MULTIFAMILY
1.5 SPACES PER DU PLUS 25%
102 ± 1.5 = 153 ± 38
102 ± 2.3 = 235 ± 27

TOTAL REQUIRED PARKING =
689 ± 65

PROPOSED PARKING:

ON-VEHICLE PARKING = 300
OFF-STREET PARKING = 389



CURRENT DESIGN:

47 DTE + 40 SPACES
SINGLE FAMILY LOTS
100 DTE + 100 SPACES
TOWN HOME = 100 SPACES
TOTAL = 332 SPACES

PROPOSED: 320 UNITS (78.7' AC + 4.21 DMAC
REQUIRED PARKING)
320 UNITS (78.7' AC + 4.21 DMAC)
25 SPACES PER FAMILY
3 SPACES PER DU
TOTAL REQUIRED PARKING = 1000 SPACES

MAINTENANCE:
1000 SPACES
1000 SPACES
1000 SPACES
TOTAL REQUIRED PARKING = 400 SPACES

PROPOSED PARKING:
DRIVEWAY PARKING = 332 SPACES
GARAGE PARKING = 332 SPACES
OFF-STREET PARKING = 400 SPACES
CHINSTRUT PARKING = 400 SPACES
TOTAL PROPOSED PARKING = 1000 SPACES

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: February 1, 2024

Agenda Item No. 13(b)

- | | |
|--|--|
| <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"/> Other: |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> CONSENT AGENDA |

SUBJECT: Broadband Deployment funding from Indian River County to supplement CDBG-CV grant funding.

RECOMMENDED MOTION/ACTION: Approve Indian River County American Rescue Plan Agreement

Approved by City Manager *Marcia N. Felt* **Date:** 2-24-24

Originating Department:	Costs: NA Funding Source: Acct. #	Attachments: Agreement RFP
Department Review: <input checked="" 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 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.

Summary Explanation/Background:

Over the past few years the City has been coordinating grant funding and a plan of deployment for broadband services in underserved areas of the City and adjoining unincorporated areas of Indian River County. Indian River County has also been proceeding with deployment of broadband services to unincorporated areas around Fellsmere. To date, City and County Staff have coordinated a joint plan of deployment that could result in underground conduit coverage over large swaths of the region. Given the small service area and customer base, the demand for services may not suffice for a large number of providers, especially smaller regional internet providers.

This item seeks to approve the Indian River County American Rescue Plan Agreement providing funding in the amount of \$3,413,744 to be used for broadband deployment in the City/County joint broadband deployment initiative.

The Design-Build Request for Proposals (RFP) will be released in late December or early January allocating a total of \$6,168,744 toward broadband deployment. A copy of the RFP as approved by the County is attached. The next steps are listed below.

- RFP Due (tentatively set for February 6, 2024).
- Selection Committee (joint City/County staff) recommends vendor (target set for February 15, 2024).
- Council selects vendor (target by February 16, 2024).
- Contract Negotiations (target completion by March 11, 2024).
- Council enters into Contract (target completion by April 4, 2024).
- City manages Community Development Block Grant – funding source for City portion and ARPA portion funded by County.
- Construction completed by end of 2024/early 2025.

INDIAN RIVER COUNTY AMERICAN RESCUE PLAN AGREEMENT

THIS INDIAN RIVER COUNTY AMERICAN RESCUE PLAN AGREEMENT ("Agreement") is entered into as of the 12 day of December, 2023 by and between Indian River County, a political subdivision of the State of Florida, whose address is 1801 27th Street, Vero Beach, Florida, 32960 ("Recipient"), and City of Fellsmere, a municipality, whose address is 22 South Orange Street, Fellsmere, FL 32948 (the "Subrecipient").

RECITALS

WHEREAS, Recipient has received funds as part of the American Rescue Plan; and

WHEREAS, Recipient is required to comply with the requirements set forth in the attached U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions (the "Conditions"); and

WHEREAS, Recipient is proposing to provide \$3,413,744 to Subrecipient to be used for the Broadband expansion to rural areas project; and

WHEREAS, Subrecipient as part of the acceptance of this assistance agrees to comply with the Conditions.

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein.
2. **Payments**. The Recipient will make a total disbursement to Subrecipient of **\$3,413,744** within 14 days of the final execution of this Agreement.
3. **Compliance Requirements**. Subrecipient agrees to comply with the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached as Exhibit "A". In addition, Subrecipient must provide bi-annual documentation of all expenses paid with grant funds showing the full award amount has been spent by or before December 31, 2026 to the Recipient. The reporting schedule is as follows:

Expense Period	Report Deadline
Prior to June 30, 2024	June 30, 2024
July 1, 2024 through December 31, 2024	December 31, 2024
January 1, 2025 through June 30, 2025	June 30, 2025
July 1, 2025 through December 31, 2025	December 31, 2025
January 1, 2026 through June 30, 2026	June 30, 2026
July 1, 2026 through December 31, 2026	December 31, 2026

If funds are not fully spent, the unspent funds must be returned to the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund by the Subrecipient.

4. **Scope of Work.** Subrecipient shall perform the tasks as identified and set forth in the Scope of Work, which is attached as Exhibit "B".

IN WITNESS WHEREOF, Recipient and Subrecipient have executed this instrument this ____ day of _____, 2023.

**CITY OF FELLSMERE, FLORIDA
CITY COUNCIL OF FELLSMERE**

Joel Tyson, Mayor

Date: _____

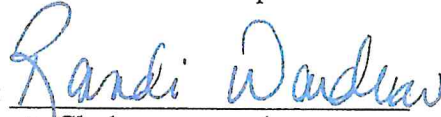
**INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS**


By: 
Susan Adams, Chairman



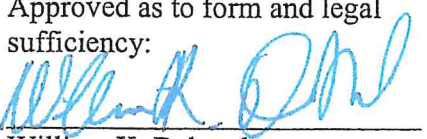
Date approved: December 12, 2023

ATTEST: Ryan L. Butler,
Clerk of Court and Comptroller

By: 
Deputy Clerk
Approved:


John A. Titkanich, Jr.
County Administrator

Approved as to form and legal
sufficiency:


William K. Debraal
County Attorney

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

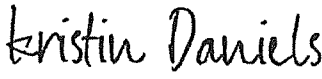
Attachment A

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: Indian River County 1801 27th st Vero Beach, Florida, 32960	DUNS Number: 079208989 Taxpayer Identification Number: 596000674 Assistance Listing Number: 21.019
--	--

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

DocuSigned by:
Recipient: 
69075E4695A2421...

Authorized Representative: Kristin Daniels

Title: Budget Director

Date signed: 5/13/2021

U.S. Department of the Treasury:

Authorized Representative:

Title:

Date:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

Indian River County

5/13/2021

Recipient

Date

DocuSigned by:
Kristin Daniels
69075E4695A2421...

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Exhibit B

Scope of Work for Fellsmere Broadband Project

The Broadband Infrastructure Project will assess the current availability of broadband internet services within the study area, which includes portions of the City of Fellsmere and unincorporated Indian River County, and then lead to the design and construction of a broadband network within that unserved/underserved area. The anticipated result of the project is a system with fiber and wireless components with sufficient hardline infrastructure, designed to meet current and future needs, and maximize the level of fiber service.

The goals of the project include:

1. Assessment of current access to broadband with available speeds, and identification of any current/ on-going gaps in service.
2. Design of broadband infrastructure that:
 - a. Remediates unserved/underserved areas of the Study Area with a minimum speed meeting the FCC definition for broadband but that strives to exceed this minimum standard;
 - b. Identifies the infrastructure needed to support the delivery of leading-edge broadband services consistent with proposed design;
 - c. Supports the operational needs of individuals and businesses through a platform of high-speed internet services;
 - d. Establishes the conditions that strive to offer a competitive rate structure for the products and services delivered to end users over the network;
 - e. Uses all available technology options to deliver a sustainable infrastructure that is as robust and flexible as practical.
3. Flexible design that may be implemented as a whole, or in phases.
4. Sustainable long-term service delivery to end-users with a high-quality product and superior customer service.

CITY OF FELLSMERE, FLORIDA

REQUEST FOR PROPOSALS

FOR

DESIGN AND CONSTRUCTION

OF

BROADBAND INFRASTRUCTURE

Issued by
City of Fellsmere, FL
REQUEST FOR PROPOSAL
APPLICATIONS DUE
February 6, 2024 at 2:00PM

Issue Date: December 22, 2023

Any person requiring special accommodations to attend or participate, pursuant to the Americans with Disabilities Act, should call the City of Fellsmere City Clerk's office at 772-646-6301 at least five (5) working days prior to the solicitation opening. If you are hearing or speech impaired, please contact the City of Fellsmere TTD line 772-783-6109

TABLE OF CONTENTS

1.	GENERAL INFORMATION	3
2.	STUDY AREA	3
3.	PROJECT OVERVIEW.....	5
4.	REQUIRED DISCLOSURES.....	6
5.	PRIOR WORK	6
6.	RFP SCHEDULE.....	7
7.	PROJECT REQUIREMENTS	8
8.	RFP RESPONSE REQUIRED ELEMENTS.....	8
9.	RFP PROPOSER QUESTIONS/ ADDENDUM PROCESS	10
10.	SUBMISSION INFORMATION.....	10
11.	EVALUATION TEAM AND RFP SCORING CRITERIA	10
12.	STATEMENT OF NON-BINDING NATURE OF RFP.....	11
13.	INTELLECTUAL PROPERTY, CONFIDENTIALITY AND OPEN RECORDS.....	12
14.	SCRUTINIZED COMPANIES LISTS	12
15.	E-VERIFY	12
16.	PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING	13
17.	SUSPENSION AND DEBARMENT.....	13

1. GENERAL INFORMATION

Access to reliable and affordable broadband internet connectivity is not a new issue. The desire to connect all citizens has been a goal identified as a central pillar of economic development, job growth, infrastructure improvements, technological innovation, energy security and quality of life in America by the U.S. Department of Agriculture in “A Case for Rural Broadband,” published in April of 2019.

The COVID-19 pandemic fully exposed the deficiency of broadband connectivity because accessible and affordable broadband options are a lifeline to education, healthcare, and employment. In areas where the digital divide is greatest, citizens are disconnected from services vital to health and welfare. More importantly, significant areas of the Study Area defined in Figure 1 are not planned to be served within the context of future build-out capital planning. Extended infrastructure needs and lower population densities in the Study Area create unique challenges for private industry to deliver services within an affordable framework on its own. Nevertheless, providing connections to these unserved areas is vital to the region’s future.

Accordingly, the City of Fellsmere and Indian River County are jointly seeking a qualified and willing partner to review the current status of broadband availability, to design a plan for the construction of an expanded network to address the deficient areas in the area, and to partner with the City of Fellsmere and Indian River County to construct the required middle mile and last mile infrastructure. This infrastructure will provide broadband services in the areas currently not served or are currently underserved and not planned to be served by existing providers. The purpose of this Request for Qualifications is to receive proposals stating qualifications from interested partners who have the technical expertise, resources and capacity to design and construct broadband infrastructure and provide access to retail service operations that will support dedicated broadband connectivity that exceed FCC minimum standards (25mb/3mb) to the areas not served or under served.

All interested firms must provide a comprehensive proposal detailing their qualifications to reach these objectives, meeting all required elements listed in this Request for Proposals (RFP) to be evaluated by the Broadband Expansion RFP Review Committee. The response identified by the Broadband Expansion RFP Review Committee as the recommended submission and selected by the City of Fellsmere City Council, in consultation with Indian River County, shall engage in further negotiations to deliver these services. The City of Fellsmere and Indian River County do not expect to operate the network infrastructure or own the infrastructure long term. The proposal should identify the intent of the provider to operate the infrastructure and provide details as to the model proposed for transferring ownership after the five-year retention period of the City’s funding source. The City wishes to partner with a vendor that is a true community partner that will be engaged in the community.

2. STUDY AREA

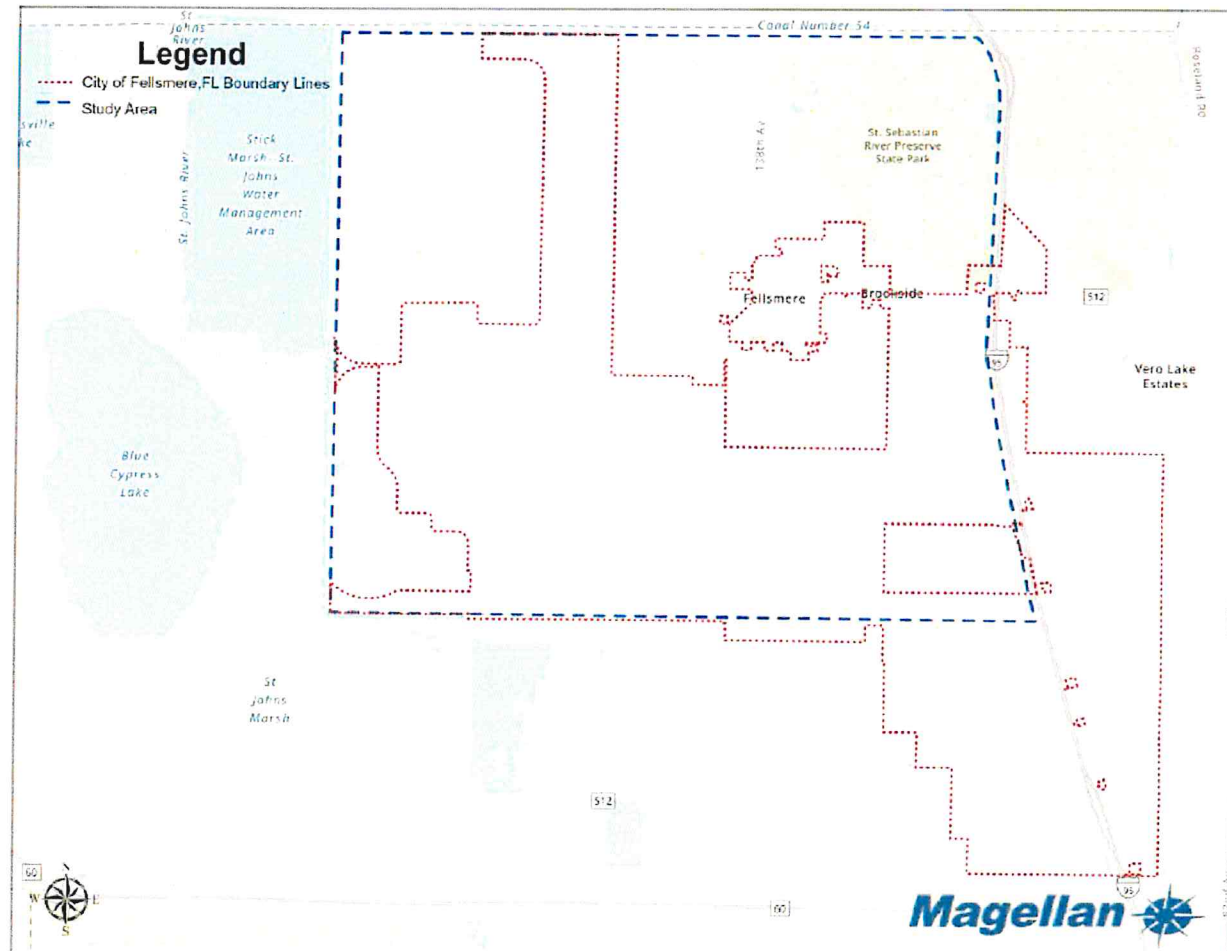
The Study Area includes portions of the City of Fellsmere and unincorporated Indian River County. Please refer to Figure 1 for a representation of the Study Area.

According to the 2020 US Census data, there are 4,834 people within the City of Fellsmere within

the Study Area. The data shows that 50.9% of individuals in Fellsmere are between the age of 20 to 59, and 21% are under 20 years old, with a median age of 32.2, which is below the national median age of 38. The median income of all households in the city is \$26,334. In addition, there are 1,431 housing units in Fellsmere of which 1,270 are occupied. The average household demographic is 5 people with 37% of existing households having at least one child under 18 years of age. Fellsmere has a fairly young population, and many of these residents are currently part of the labor market. Fellsmere has a viable business community with significant potential for growth. The City's top occupations based on the number of employees are: Building & Grounds Cleaning & Maintenance, Farming, Fishing, & Forestry, and Construction & Extraction. The City's economy also relies heavily on small local businesses such as restaurants, gift shops, vehicle repair establishments and other services.

The unincorporated Indian River County areas located with the Study Area are comprised mostly of 5, 10 and 20-acre ranchettes. Within these ranchettes are numerous agriculturally related small businesses as well as traditional home-based businesses. The area generally encompasses part of Census Tract 509.08 lying West of Interstate 95 and North of the conservation lands North State Route 60. Population within the unincorporated area of Indian River County within the Study Area is reported by the US Census at 4,299 people in 2020.

Figure 1: Study Area



The Study Area expects to see an increasing demand for bandwidth in the coming years to sustain expected rapid growth and the need for digital inclusion expressed by the community. Fortunately, there are already several service providers who have been supporting the area's residents and businesses. However, the lack of fiber offerings, especially for the area's outlying residents, may deepen the digital divide if construction of additional infrastructure is left unaddressed. Moving forward, the city and county see the need to upgrade the current broadband infrastructure and services offered by providers as a necessity to make this generational change to meet future demand in the community.

3. PROJECT OVERVIEW

The Broadband Infrastructure Project, a collaboration between City of Fellsmere and Indian River County, with funding support from the State of Florida and the Federal government, desires to identify a qualified partner through this RFP who can assess the current availability of broadband internet services and then design and construct a network within the unserved/underserved areas of each county to provide the availability of broadband connections to those unserved/underserved geographic areas. The City of Fellsmere shall act as the lead agency in the Project, and all contracts shall be with the City of Fellsmere. The selected proposal in response to this RFP will serve as the basis for determining the provider best positioned to successfully undertake the endeavor and negotiate a contract with the City of Fellsmere to design and implement such a network.

Upon completion of the assessment and system design by the selected vendor and prior to onset of construction, the City will obtain environmental clearances and the current Davis-Bacon wage rate determination that will be required to set minimum pay rates for construction labor – each required of the city and county's funding sources.

The level of fixed wireless broadband, licensed or unlicensed, versus fiber service to the home/business shall be reflected in the Proposal. The City of Fellsmere and Indian River County will consider any percentage of wireless versus hardline fiber broadband where the ability to reasonably meet current and future needs can be demonstrated. For wireless components of the system, the City of Fellsmere and Indian River County desire a proposal that illustrates the ability to support the proposed wireless components of the system with sufficient hardline infrastructure to ensure the design will reasonably meet current and future needs. The City of Fellsmere and Indian River County desire a system that can maximize the level of fiber service within the Study Area.

Project goals are listed below. The response to this RFP should demonstrate the ability and qualifications of the Proposer to meet the stated goals.

1. Assess current access to broadband with available speeds and identify current/ on-going gaps in service for unserved and underserved areas of the Study Area.
2. Develop a proposed system design that:
 - a. Remediates unserved/underserved areas of the Study Area with a minimum speed meeting the FCC definition for broadband but that strives to exceed this minimum standard;
 - b. Identifies the infrastructure needed to support the delivery of leading-edge broadband

- services consistent with proposed design;
 - c. Establishes the conditions that strive to offer a competitive rate structure for the products and services delivered to end users over the network;
 - d. Uses all available technology options to deliver a sustainable infrastructure that is as robust and flexible as practical; and
 - e. Provides flexibility such that the system design may be implemented as a whole or in phases.
3. Provides for sustainable long-term service delivery to end-users with a high-quality product and superior customer service.
 4. Is able to be implemented as expediently and professionally as possible without compromising the integrity of the project.
 5. Has full transparency.
 6. Is an engaged community partner.

Responses will be evaluated for evidence of the Proposer's ability to meet the project goals and implement a designed system pursuant to the scoring criteria listed in this RFP. The identified partner will move forward with negotiations to enter into an agreement to begin implementation of the scope of work identified in this RFP and the negotiated terms.

4. REQUIRED DISCLOSURES

The project will be funded in part with federal funds and is subject to the Conditions set forth in APPENDIX A. The City reserves the right to require additional conditions as may be required by the funding partners and negotiated with the selected vendor.

5. PRIOR WORK

The City of Fellsmere and Indian River County have been working to expand broadband in within the Study Area since early 2021. The City, utilizing CARES funding, in partnership with Indian River County and utilizing the service of Magellan Advisors, developed a Broadband Study to identify unserved and underserved areas West of Interstate 95 and North of SR60 and develop a plan for broadband expansion to serve such areas. In mid-2022, the City of Fellsmere received \$2,755,000 in Community Development Block Grant Coronavirus (CDBG-CV) funding. In addition, Indian River County is investing approximately \$3,413,744 of American Rescue Plan Act (ARPA) funds into the project. Prior to seeking potential partners to construct the broadband infrastructure, the City released a Request for Information to seek confirmation of the study results and proposed design solution. Having received a number of qualified responses that indicated the system design was acceptable to a number of retail internet providers, the City then released a formal Request for Proposals to seek a public-private partnership to utilize the awarded funds for their intended purpose. Unfortunately, only one response was received indicating that they wanted to partner with the City but not on the network that was designed.

After speaking with the interested firms to better understand the reason for nonresponse, the City of Fellsmere determined that each firm had their own reasons for not responding. The reasons ranged from desire to have wholesale agreements, uncertainty on partnering with other federal awards, and as mentioned, desire to construct broadband infrastructure, just not as designed by the City.

In response to these comments, the City of Fellsmere is releasing this RFP to provide an agreement with City of Fellsmere to design, construct and operate a broadband network to be developed with the City's CDBG-CV and County's ARPA funds along with additional private capital to meet the middle and last mile service needs for broadband expansion in the Study Area.

Links to prior planning and design efforts and previously released requests can be found below.

Broadband Study

[City of Fellsmere Broadband Feasibility Study draft reportv2](#)

Request for Information

[Broadband Expansion Request for Information | Fellsmere Florida \(cityoffellsmere.org\)](#)

Broadband Design

[https://www.cityoffellsmere.org/sites/default/files/fileattachments/administration/page/16116/fellsmere conduit network design package pages 1 through 109.pdf](https://www.cityoffellsmere.org/sites/default/files/fileattachments/administration/page/16116/fellsmere_conduit_network_design_package_pages_1_through_109.pdf)

[https://www.cityoffellsmere.org/sites/default/files/fileattachments/administration/page/16116/fellsmere conduit network design package pages 110 through 218.pdf](https://www.cityoffellsmere.org/sites/default/files/fileattachments/administration/page/16116/fellsmere_conduit_network_design_package_pages_110_through_218.pdf)

Request for Proposals

[Broadband/Fiber-Optic Partnership RFP | Fellsmere Florida \(cityoffellsmere.org\)](#)

6. RFP SCHEDULE

Submittals will be opened on February 6, 2024, at 2:00 p.m. (local time) with the intention of completing the review by February 9, 2024. Tentative Timeline and Milestones are as follows.

DATE	MILESTONE
December 22, 2023	RFP Issued
January 15, 2024	Deadline for Questions and Requests for Clarification
January 22, 2024	Final Addendum to RFP/ Statement of Clarifications Issued
February 6, 2024	Response (Proposal) to RFP due by 2:00 p.m. "Local Time"
Feb. 6 – 9, 2024	Review of Submitted Responses (Proposals)
Feb. 9 - 14, 2024	Interviews (if determined advisable by the committee)
February 15, 2024	Review Committee Recommendation
February 15, 2024	City Council Selection of Recommended Firm
Feb. 16 – Mar. 11, 2024	Negotiation with selected firm
April 4, 2024	Approval of agreement and price by City Council
April 4, 2024	Effective date of agreement

7. PROJECT REQUIREMENTS

The City of Fellsmere and Indian River County are seeking a private or public partner that will provide enterprise-grade internet services to individuals and businesses located in areas that are currently unserved or underserved to meet the needs requiring broadband connectivity. The City of Fellsmere and Indian River County expect that the partner will provide a full “turnkey” solution for the delivery of products and service that include assessment of current conditions, design, engineering, procurement, permitting, construction, operation, maintenance, repair, and regulatory compliance. The designed network shall be adaptable for future growth and technology and shall provide coverage throughout the Study Area referenced in section two (2), figure one (1). The proposed solution should be consistent with project goals listed in section three (3) of this Request for Proposals. Any system design must, at a minimum, provide speeds consistent with the U.S. Department of Treasury, State and Local Fiscal Recovery Funds exceed FCC minimum standards (25mb/3mb) but strive to exceed this minimum standard up to symmetrical 100 Mbps download and upload speeds.

The partner with the proposal judged to be the most qualified submission will then engage in negotiations with the City to define the scope of work and terms for project implementation. Upon contract execution, the City of Fellsmere and Indian River County expect project work to begin immediately after execution of the agreement and incorporated scope of work. Throughout the duration of the project, the partner will be required to meet all project reporting requirements specified by the U.S. Department of Treasury, Project and Expenditure Report for State and Local Fiscal Recovery Funds (current version). The construction timeline will depend somewhat on the partnership developed with the successful Proposer and time required for the City to obtain environmental clearance; however, the Proposer should be prepared to meet aggressive timelines for design, build-out and activation of the network. It should be noted that the project does not consider wireless, unlicensed, or fixed licensed, a suitable sole option for long-term sustainability for meeting its broadband needs; however, providing wireless offerings in conjunction with a core hardline service connection may be considered, and in some cases desired.

Due to the inability to provide accurate structural and capacity analysis for county or city-owned assets, it should be assumed that no such vertical infrastructure is available. The city and county do own and operate significant miles of public right-of-way that could be used in conjunction with this project. For any vertical assets that may be owned by the city or county, these partners are willing to negotiate during design to study vertical infrastructure for potential use at that stage of the process. The permitting process will be required utilizing normal processes; however, Indian River County will commit to being co-applicants and to provide staff support to navigate permitting processes efficiently.

8. RFP RESPONSE REQUIRED ELEMENTS

All interested parties who seek to develop a partnership with the City of Fellsmere and Indian River County must submit a response in the form of a proposal that outlines their qualifications and ability to meet the goals, objectives and requirements illustrated in this RFP. The response will be used to evaluate the most appropriate fit for the project. To achieve a full, fair, and uniform review process, all submittals must include four (4) hard copy originals and one (1)

electronic copy of the response that include the following components in order to be judged responsive to this RFP:

- A. **Section 1:** Provide a Letter of Transmittal on company letterhead stating why the Proposer is interested in developing a partnership with the City of Fellsmere and Indian River County and provide a listing of any requirements listed in this RFP that it is unable to meet.
- B. **Section 2:** Provide a project organizational chart of the business showing how the initiative will be organized. Provide an overview of the Proposer's organization, services, partners, resources, and capabilities. Provide details on the company's (or its shareholders') knowledge, experience, and operations within the broadband telecommunications industry and, if applicable, infrastructure development in the region, as well as key expertise that qualifies it to be considered for this project. Demonstrate any similar arrangements with municipalities, electric utilities, or other public-private partnerships.
- C. **Section 3:** If a current broadband provider, include an overview of your products and services, operations, total subscriber count, type of services (business/residential), local presence in the region and other markets served. Provide a synopsis of the company's plan for community engagement including provisions for service to low-income families and involvement in the community outside of broadband service delivery. Although not required, please note within the proposal if secondary, long-term, government-owned parallel facilities are included within the proposal for a future city-government broadband and communication network in select areas of the Study Area. In addition to other community engagement initiatives of the Respondent, such provisions will be judged as contributing to Goal #6.
- D. **Section 4:** Provide information that demonstrates the ability of the business to provide the capital financing required to implement a proposed system design. This section should also identify how the funding contributions of the City of Fellsmere and separately Indian River County are to be utilized. The proposal shall contain an exhibit reflecting the extent of service that is expected to be delivered by the city and county funding with additional extent from the applicant's sources of funds. Each funding source shall be allocated to unique network components with no overlap. A project timeline shall be included reflecting the time to complete each separate phase of the project (assessment, design, and construction).
- E. **Section 5:** Include a detailed narrative that clearly and completely addresses the project goals, objectives and desired outcomes as illustrated in this document with particular emphasis and detail given to the information provided in sections three (3) and seven (7) of this RFP.
- F. **Section 6:** Define the roles and responsibilities for the Proposer, the County, and the City of Fellsmere, if any, including any other requirements. Define how the Proposer's proposal will comply with local, state, and federal regulatory requirements and

demonstrate that the interested parties possess all federal, state and/or local qualifications/licenses to construct the facilities and provide services in the City of Fellsmere.

- G. **Section 7:** Provide a minimum of three (3) industry/municipality references that demonstrate the Proposer's ability to successfully plan, implement and deploy broadband networks products and services using innovative public and/or private environments.
- H. **Section 8:** Provide any additional supporting information, documentation or materials that illustrate the qualifications and ability of the proposer to meet the goals, objectives and requirements outlined in this Request for Qualifications.

9. RFP PROPOSER QUESTIONS/ ADDENDUM PROCESS

Questions relating to definitions, interpretations, information and/or requests for clarification must be in writing, on or before January 15, 2024, at 5:00 P.M. (Local Time), directed to: Laura Hammer, Grant Administrator, City of Fellsmere at 772-646-6325 or grantadmin@cityoffellsmere.org.

No questions will be accepted after the deadline for questions has passed. Responses to questions or requests for clarification regarding this RFP will be issued in writing as an addendum and posted at [Bids and RFPs | Fellsmere Florida \(cityoffellsmere.org\)](https://cityoffellsmere.org/Bids-and-RFPs).

Any such addenda shall be issued by January 22, 2024, at 5:00 p.m. (Local Time) and shall be considered part of the RFP.

10. SUBMISSION INFORMATION

Submission Date and Time: No later than February 6, 2024, at 2:00 p.m. "local time"

The City of Fellsmere will receive sealed proposals delivered to 22 S. Orange Street, Fellsmere, FL 32948. Only those responses received prior to or on the submission date and time will be considered.

11. EVALUATION TEAM AND RFP SCORING CRITERIA

The Broadband Expansion RFP Review Committee will evaluate the responses submitted and will be evaluated on the following criteria to determine the finalist(s):

1.	Relevant experience and qualifications	Max 20 points
2.	Service Area	Max 25 points
3.	Timeline of service delivery	Max 20 points
4.	Overall Quality of Submission/ Completeness of Submission	Max 15 points
5.	References	Max 10 points

6.	Financial Plan/Soundness	Max 10 points
Total score		Max 100 points

The committee may, at their discretion, request any or all Proposers to clarify information presented in the submittal via formal interviews or request for additional information.

Once a Provider has been selected, the City and the Provider will enter into a negotiation period to refine the vision for the Project and finalize the terms of the Agreements.

FINAL CONTRACTS OR AGREEMENTS SHALL BE SUBJECT TO APPROVAL BY CITY OF FELLSMERE CITY COUNCIL.

It is generally anticipated that a single entity will be selected to move forward. However, partnerships that increase the capacity to complete the project in a timely fashion formed under one entity will not be automatically dismissed.

The City of Fellsmere reserves the right to evaluate all submitted proposals and to move forward with the submission deemed to be in the best interest of the city. The City may, in their sole and absolute discretion, accept or reject, in whole or in part, for any reason whatsoever any or all Proposals; re-advertise this RFP; postpone or cancel at any time the RFP process; waive any informalities of or irregularities in the process; negotiate with any party or request additional information if it so desires.

Proposals that are not submitted on time and/or do not conform to the RFP requirements will not be considered. The City may determine, at its sole discretion, whether any aspect of the proposal satisfies the criteria established in this RFP. In all cases, the City of Fellsmere or Indian River County shall have no liability to any contractor for any costs or expense, incurred in connection with this proposal or otherwise.

The City of Fellsmere will allow a proposer's representative bearing proper authorization and identification to sign for, receive, and withdraw the proposer's unopened proposal prior to submission deadline. A firm wishing to modify his/her proposal may do so by withdrawing the initial submission and then submitting a modified proposal prior to the deadline. Neither the staff nor the facilities of the City will be available to assist a proposer desiring to make modifications. It will be the proposer's responsibility to make all modifications. The City of Fellsmere may conduct discussions with persons submitting proposals for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. The City of Fellsmere reserves the right to cease all contract preparation activities at any time and reject all proposals if such action is determined to be in the best interest of the City/County.

12. STATEMENT OF NON-BINDING NATURE OF RFP

The issuance of this RFP and any subsequent response by a Proposer does not create a binding obligation on the part of the City of Fellsmere or Indian River County to enter into any form of agreement or contract, or to pay any costs associated with the preparation of responses or

submittals with the Proposer, for the development of a broadband network, delivery of products and services or otherwise. Nor shall the RFP in any way create an association, partnership, or joint venture among Proposers and the City of Fellsmere or Indian River County.

13. INTELLECTUAL PROPERTY, CONFIDENTIALITY AND OPEN RECORDS

The City of Fellsmere or Indian River County will not pay for any information requested, and all responses submitted become the property of the City of Fellsmere. Responses will not be returned and may be subject to disclosure pursuant to state open records statutes. If a Proposer believes that any portion of its response includes proprietary or other confidential information, it must be clearly labeled "Confidential information" as such, and the Proposer must state the basis for the claim to confidential treatment. To the extent permitted by law, the City of Fellsmere and Indian River County will treat such information as confidential and will not disclose it to a third party without prior notification and authorization.

14. SCRUTINIZED COMPANIES LISTS

The Proposer certifies that it and those related entities of Proposer as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the 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, Contractor certifies that it and those related entities of Proposer 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 of the Florida Statutes and are not engaged in business operations in Cuba or Syria. The County may terminate this Contract if Company 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. County may terminate this Contract if Company, 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. Accordingly, firms responding to this solicitation shall return with their response an executed copy of the attached "Certification Regarding Prohibition Against Contracting With Scrutinized Companies." Failure to return this executed form with submitted bid/proposal/statement of qualifications will result in the response being deemed non-responsive and eliminated from consideration.

15. E-VERIFY

Proposer must be registered with and use, at their sole expense, the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees, as required by Section 448.095, F.S. Owner, Proposer, and subcontractors may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. Proposer is responsible for obtaining proof of E-Verify registration for all subcontractors in the form of an affidavit, as described in Section 448.095(5)(b) F.S. This requirement applies to any provider of services or goods.

16. PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING

Proposers are hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the County will not request documentation of or consider a Proposer's social, political, or ideological interests when determining if the Proposer is responsible. Proposers are further notified that the County's governing body may not give preference to a Proposer based on the Proposer's social, political, or ideological interests. Proposers shall not provide any information relating to these interests in their submittal.

17. SUSPENSION AND DEBARMENT

City will not make award to parties listed on the government-wide exclusions in the System for Award Management (SAM). The proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions. By submittal of a response to this solicitation, proposer asserts neither it nor its principals is presently debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participation in this work by any Federal department or agency. **Proposer is required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>) prior to execution of the agreement.**

NOTICE

NOTICE IS HEREBY GIVEN THAT sealed responses will be received by the City of Fellsmere until 2:00 PM on Friday, February 6, 2024, at which time the responses will be opened for the following project:

Assessment, Design and Construction of Broadband Infrastructure

Responses may be sent by mail or hand-delivered to 22 South Orange Street, Fellsmere, Florida 32948. Responses will be publicly opened, and Proposers name read aloud at the above office immediately following the above-stated closing time. Responses received after the time set for the opening of the responses will not be considered and will be returned unopened.

Copies of the full Request for Qualifications, Prior Work, and other project documents are on file in the above office and open for public inspection. Copies can be viewed and downloaded for free from <https://www.cityoffellsmere.org/rfps>. Complete sets of paper versions of the Request for Qualifications, Prior Work, and other project documents may be obtained by applying to Laura Hammer, Grant Administrator, 22 S. Orange Street, Fellsmere, FL 32948, at a cost of \$50 per set.

Questions regarding this Request for Qualifications shall be submitted to Laura Hammer, Grant Administrator, City of Fellsmere, 22 S. Orange Street, Fellsmere, FL 32948 or by email to grantadmin@cityoffellsmere.org. Question must be received in writing no later than January 15, 2024. Answers to all questions received will be posted at <https://www.cityoffellsmere.org/rfps> by no later than January 22, 2024.

All responses shall be submitted in compliance with the requirements of the Request for Qualifications. The City reserves the right to delay reviewing the responses for up to sixty (60) days after the response opening, to waive information in any response, or to reject any or all responses in whole or in part with or without cause that, in its judgment, will serve the best interests of the City.

The City of Fellsmere is an Equal Opportunity Employer. WBE/MBE firms are encouraged to respond to this Request for Proposals.

Dated: December 15, 2023

/s/ Mark D. Mathes, City Manager

CERTIFICATION REGARDING PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES

(This form **MUST** be submitted with your response)

I hereby certify that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes or are engaged in a boycott of Israel.

In addition, if this solicitation is for a contract for goods or services of one million dollars or more, I hereby certify that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are 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 s. 215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

I understand and agree that the County may immediately terminate any contract resulting from this solicitation upon written notice if the undersigned entity (or any of those related entities of Proposer as defined above by Florida law) are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has 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 it is found to have been engaged in business operations in Cuba or Syria.

Name of Proposer: _____

By: _____
(Authorized Signature)

Title: _____

Date: _____

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned Firm certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant/Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant/Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Consultant/Contractor Authorized Official

Name and Title of Consultant/Contractor Authorized Official

Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY AND VOLUNTARY EXCLUSION

(1) The Consultant/Contractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature of Consultant/Contractor Authorized Official

Name and Title of Consultant/Contractor Authorized Official

Date

CERTIFICATION OF COMPLIANCE WITH 20.055(5) FS

The Consultant/Contractor Certifies:

Each contract with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

"It is the duty of every state officer, employee, agency, special district, board, commission, consultant, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section."

Company/Firm:

Authorized Signature:

Written Name:

Title:

Date:

STATEMENT OF PUBLIC ENTITY CRIMES

This is a sworn statement under Section 287.133(3)(a), Florida Statutes, on public entity crimes and must be signed in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted with Bid, Proposal or Contract No. _____ for _____.
2. This sworn statement is submitted by _____ (Name of entity submitting sworn statement) whose business address is _____ and whose mailing address, if different, is: _____. Its Federal Employer Identification Number (FEIN) is _____. (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)
3. My name is _____ (please print name of individual signing) and my relationship to the entity named above is _____.
4. I understand that a Public Entity Crime as defined in Paragraph 287.133(1)(g), Florida Statutes, is a violation of any State or Federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other State or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or any agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that convicted or conviction as defined in Paragraph 286.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any Federal or State trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial or entry of a plea of guilty or nolo contendere.
6. I understand that an affiliate as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
 - (a) A predecessor or successor of a person convicted of a public entity or crime; or
 - (b) An entity under the control of a natural person who is active in the management of the entity and who has been convicted of a public entity crime. *Affiliate* includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an *affiliate*.
7. I understand that a *person* as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods

or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. *Person* includes those officers, directors, executives, shareholders, partners, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies.)

____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989 AND (Please indicate which additional statement applies.)

____ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

____ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order).

____ The person or affiliate has not been placed on the convicted vendor list. (Please describe any action taken by or pending with the Department of General Services.)

Dated: _____

(Signature)

STATE OF _____
COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____ who, after first being sworn by me, affixed his/her signature in the space provided above on this _____ day of _____.

WITNESS my hand and official seal in the State and County last aforesaid this _____ day of _____.

Notary /State of Florida at Large

Personally Known _____ OR produced identification _____
Type of identification produced: _____

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____ }
County of _____ }

_____, being first duly sworn, disposes and says that:
(Name/s)

1. They are _____ of _____ the Bidder that
(Title) (Name of Company)
has submitted the attached bid;
2. He/She is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham Bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City/County or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

(Title) _____

STATE OF { _____ }
COUNTY OF { _____ }

The foregoing instrument was acknowledged before me this _____
(Date)

by: _____ who is personally known to me or who has produced
_____ as identification and who did (did not) take an oath.

Notary (print & sign name)

Commission No. _____

CERTIFICATION OF E-VERIFY

DESIGN AND CONSTRUCTION OF BROADBAND INFRASTRUCTURE

Consultant/Contractor acknowledges and agrees to the following:

Consultant/Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. All persons employed by the Consultant/Contractor during the term of the Contract to perform employment duties within Florida; and
2. All persons, including Subcontractors, assigned by the Consultant/Contractor to perform work pursuant to the Contract with the City of Fellsmere.

Company/Firm: _____

Authorized Signature: _____

Written Name: _____

Title: _____

Date: _____

Appendix A

Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) – will apply to Construction Phase.

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

(2) Withholding. OWNER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under

this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the OWNER may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Emergency Management Agency (FEMA) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to FEMA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to FEMA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to FEMA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable

wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its

subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Compliance with the Copeland "Anti-Kickback" Act. - will apply to construction phase

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Compliance with the Contract Work Hours and Safety Standards Act: - will apply to construction phase

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The OWNER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include

these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement. Must be included in any federal contract involving substitution of parties, assignment, or performance of experimental, developmental, or research work under that funding agreement.] See Appendix II of Part 200, if this applies – the County has not had to prepare a clause for this item.

Clean Air Act and Federal Water Pollution Control Act:

(1) Clean Air Act.

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower-tier transaction it enters into.

(3) This certification is a material representation of fact relied upon by OWNER. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to OWNER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in

connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recycled/Recovered Materials:

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
(i) Competitively within a timeframe providing for compliance with the contract performance schedule;
(ii) Meeting contract performance requirements; or
(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Prohibition on Contracting for Covered Telecommunications Equipment or Services:

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

- (2) By necessary implication and regulation, the prohibitions also do not apply to:
- (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) Reporting requirement.
- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

No Obligation by Federal Government:

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts:

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Affirmative Steps:

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

License and Delivery of Works Subject to Copyright and Data Rights: [If Copyrightable subject matter is involved in the project] The Contractor grants to the Owner a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Owner or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Owner data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Owner.

Termination for breach, and termination for convenience must both be addressed in the agreement.

TERMINATION IN REGARDS TO F.S. 287.135: CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the 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, CONTRACTOR certifies that it and those related entities of CONTRACTOR 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 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Contract if CONTRACTOR 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.

OWNER may terminate this Contract if CONTRACTOR, 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.

City of Fellsmere City Council
Agenda Request Form

Meeting Date: February 01, 2024

Agenda Item No. 13(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: ADA Compliant Website for City of Fellsmere

RECOMMENDED MOTION/ACTION: Approve piggyback REVIZE Web Services Sales Agreement.

Approved by City Manager  **Date:** 1.24.26

Originating Department: City Clerk	Costs: \$21,050 Year 1,2,3 - \$16,250 Year 4-\$2400, Year 5-\$2400 Funding Source: ARPA Acct. #	Attachments: -COF Sales Agreement -COF Addendum -IR Mosquito Control Sales Agreement
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 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_____X_____ or Not applicable in this case_____ Please initial one.

Summary Explanation/Background

ADA compliance is mandatory for city websites and it has been an effort to identify a company to develop an ADA-compliant website for the City of Fellsmere.

The city website should provide links to important information such as city news, events, and government services, as well as a directory of city departments and services. Municipality sites serve as a valuable resource for residents and are designed to make it easy for them to access the information and services they need. REVIZE has established themselves as the go-to vendor for governments looking for a website that will serve residents better, inspire them more, and get them actively involved in the community.

REVIZE's training program is customized based on each client's needs and they provide hands-on training either onsite or off site through web conferencing tools and they also have unlimited Technical Support available 24/7/365. During the site development and set up phase, their data migration team will move all the pages and documents using the REVIZE CMS. Staff support the REVIZE Web Services Sales Agreement.

Revize Web Services Sales Agreement

This Sales Agreement is between Fellsmere, FL ("CLIENT") and Revize LLC, aka Revize Software Systems, ("Revize").
 Federal Tax ID# 20-5000179 Date: 08-02-23

CLIENT INFORMATION:		REVIZE LLC:
Client Name:	<u>Fellsmere FL</u>	Revize Software Systems
Client Address:	<u>22 S. Orange Street</u>	150 Kirts Blvd., Suite B
Client Address 2:		Troy, MI 48084
Client City/State/Zip:	<u>Fellsmere, FL 32948</u>	248-269-9263
Contact Name:	<u>Maria Suarez-Sanchez 772-646-6301</u> <u>cityclerk@cityoffellsmere.org</u>	
Billing Dept. Contact:	<u>Maria Suarez-Sanchez 772-646-6301</u> <u>cityclerk@cityoffellsmere.org</u>	
Client Website Address:	<u>www.cityoffellsmere.org</u>	

The CLIENT agrees to purchase the following products and services provided by REVIZE:

Quantity	Description	Price
1	Phase 1 – Project Planning and Analysis, onetime fee:	
		\$500
1	Phase 2 – Discovery & Design from scratch - One concept, three rounds of changes, home page and inner page designs and layout, includes Responsive Web Design.	
		\$1,775
1	Phase 3 & 4 – Revize Template Development - Set-up all CMS modules listed on the following page with I-framing or linking to any additional 3rd party web applications and CMS module updates. Onetime fee:	
		\$2,925
1	Phase 5 – Quality Assurance Testing, onetime fee:	
		\$800
1	Phase 6 – Site map development/content reorganization and content migration from old website into new website including spell checking and style corrections – up to 750 web pages and documents (approximate amount on your website today). No old calendar event items.	
		\$2,350
1	Phase 7 – Content Editing/Administrator Training, one-day session, remote, onetime fee:	
		\$700
1	Phase 8 – Go Live, onetime fee:	
		Included
1	Revize Annual Fee, pre-paid: Includes unlimited tech support, CMS software updates (up to 4 users), security software updates, and 24-hour website health monitoring. Website hosting on 4 redundant server farms included free of charge with SSL security certificate (10 GB storage space, 100 GB monthly bandwidth limit.	
		\$2,400/yr.
Year One Grand Total		\$11,450

Terms:

1. Five-year agreement. Revize will provide a free redesign beginning in year 4 after 3 completed years of service.
2. Payments: Payments are due within thirty (30) business days of the CLIENT's receipt of an invoice from Revize.
3. Revize requires payments to be made according to the payment schedule listed on page 4.
4. All future payments are subject to annual appropriations approval from CLIENT.
5. Additional content migration, if requested, is available for \$3 per web page or document.
6. Additional bandwidth is available at \$360 per year for each additional 50GB per month.
7. This agreement is the only legal document governing this sale & the proper jurisdiction and venue for any legal action or dispute relating to this Agreement shall be the state of Florida.
8. Both parties must agree in writing to any changes or additions to this Sales Agreement.
9. The CLIENT understands that project completion date is highly dependent on their timely communication with Revize. CLIENT also agrees and understands that;
 - a. The primary communication tool for this project and future tech support is the Revize customer portal found at <https://support.revize.com>.
 - b. During the project, the CLIENT will respond to Revize inquiries within 48 hours of the request to avoid any delay in the project timeline.
 - c. The CLIENT understands that project timelines will be delayed if they do not respond to Revize inquiries in a timely manner.
10. The CLIENT owns the design, content, and will receive software updates to the CMS for the life of the contract.
11. Unless otherwise agreed, Revize does not migrate irrelevant records, calendar events, news items, bid results, low quality images, or data that can reasonably be considered non-conforming to new website layout.
12. Revize expects to complete phase 7 (training) of this project within 18-24 weeks from the date of the project kickoff meeting. Upon completion of phase 7 it is the CLIENT's responsibility to decide when to go live with the website. The CLIENT's decision to delay go-live for any reason, unrelated to a functional defect making the site inoperable, does not constitute breach of contract on the part of Revize. The CLIENT understands that it is incumbent upon the CLIENT to respond to Revize requests in a timely manner. The CLIENT further understands that any timeline delays due to their lack of timely communication do not constitute a breach of contract on the part of Revize.

Enterprise Revize CMS License

As part of this agreement Revize Software Systems, LLC. will provide to the CLIENT a full Enterprise Revize CMS Software license. This software is a proprietary software built and maintained by Revize Software Systems LLC. and is intended to allow for the CLIENT to easily update the content of their website. CLIENT agrees that this license will only be used to maintain the websites included in this agreement. Sharing of the content management system, by the CLIENT, with other entities not identified in this agreement is prohibited.

Revize will maintain, update, and host the Revize CMS during the contract period. In the event that the contract is terminated, for any reason, Revize will provide the latest version of the Revize CMS to the CLIENT provided all products and services provided up to the date of termination of the contract are fully paid. This system will then have the ability to be hosted and used by the CLIENT as long as they wish. Revize will provide reasonable support in transferring the CMS system to the CLIENT's decided upon hosting architecture.

Products CLIENT Owns Include:

- Revize CMS License
- Hosted Website
- Source Files
- All Included Revize Web Applications
- Design & Page Content

AGREED TO BY:

CLIENT

Signature of Authorized Person:

Name of Authorized Person:

Title of Authorized Person:

Date:

REVIZE



Brian Rohen

Account Executive

11-9-23

Please sign and return full sales agreement to: brian@revize.com

Fax 1-866-346-8880

**Revize Site Payment Schedule for Fellsmere FL
(Three Years paid in advance)**

Revize Year One Pay-In-Phases Payment Plan:

During year one the client reserves the option to pay for the website upon completion of certain project phases.
The first payment would be collected upon project start.

Year One 1 st Payment (start of project)	\$16,250
Year Four.....	\$2,400
Year Five	\$2,400

The Following Applications & Features will be integrated into Your Website Project

Revize provides applications and features specifically designed for government websites. The applications and features are categorized into:

- Citizen's Communication Center Apps
- Citizen's Engagement Center Apps
- Staff Productivity Apps
- Site Administration and Security Features
- Mobile Device and Accessibility Features

Citizen's Communication Center Apps

- Home Page Alerts
- Document Center with keyword search
- FAQs with keyword search
- Staff Directory with keyword search
- RFP/RFQ Bid Posting Templates
- Job Postings
- News Center with Facebook/Twitter Integration
- "Share This" Social Media App
- Photo Galleries
- Quick Link Buttons
- New Revize Web Calendars with monthly grid and listing view
- Sliding Feature Bar
- Language Translator – over 95 languages

Citizen's Engagement Center Apps

- Citizen Request Center with Captcha
- Online Bill Pay
- RSS Feed

Staff Productivity Apps

- Image Manager
- iCal Integration
- Link Checker
- Menu Manager
- Online Web Form Builder with drag & drop text fields
- Bid Posting
- Website Content Archiving
- Website Content Scheduling

Site Administration and Security Features

- Audit Trail
- Drag and Drop Menu Management
- Drag and Drop Picture Management
- Drag and Drop Document Management
- History Log
- URL Redirect Setup
- Roles and Permission-based Security Mode
- Secure Site Gateway
- SSL Security Certificate
- Unique Login/Password for each Content Editor
- Web Statistics and Analytics

Mobile Device and Accessibility Features

- ADA Compliant WCAG 2.1 AA
- ADA Accessibility Widget
- Responsive Website Design (RWD) for great mobile phone viewing

Service Level Agreement

Revize Maximum Response Times via Severity Level

- 1 hour for crisis issues
- 4-6 hours for critical issues
- 24 hours for normal issues

Crisis issues, determined by Revize, are defined as when a website error renders the CMS program or website completely unusable or nearly unusable or introduces a high degree of operational risk and no workaround is available. Until this error is resolved, the website is essentially halted. A large number of users and or core program functionality are severely impacted.

Critical issues are defined as website errors that are an inconvenience, or causes an inconsistent behavior of the website, which does not impede the normal functioning of the website. It could be an error that occurs consistently and affects non-essential functions and is an inconvenience which impacts a small number of users. May also contain visual errors for the graphical display of the website that is not ideal but still functioning correctly.

Normal issues are defined as an error that has a small degree of significance or is a minor cosmetic issue, or is a one-off case. A one-off case occurs when the error occurs and cannot be reproduced easily. These are errors that do not impact the daily use of the website. A low error is something that does not affect normal use, and can be accepted for a period of time, but the user would eventually want changed.

Technical Support Escalation:

If an issue cannot be remedied by the Tech Support technician within 3 days, it will be escalated to the CTO, Ray Akshaya. If the problem is not resolved within 3 business days, then the Business Development Director, Joseph Nagrant, will assemble a team to work on the issue and have a conference call with the client explaining the resolution path the company will take to resolve the issue. If additional time is needed, the Business Development Director will contact the client and notify the client with an explanation and a follow up date as agreed by both the client and Revize.

Revize Support

- 7 a.m. – 7 p.m. CST Phone Support (Monday thru Friday)
- 24/7/365 Portal & Email Support
- Dedicated support staff to provide assistance and answer all questions
- Training refreshers
- Video tutorials and online training manual

www.revize.com

**FIRST ADDENDUM TO REVIZE WEB SERVICES SALES AGREEMENT
BETWEEN CITY OF FELLSMERE, FLORIDA AND REVIZE, LLC**

THIS FIRST ADDENDUM (the "Addendum") dated the ____ day of _____, 2023, is attached to and made a part of the Revize Web Services Sales Agreement between the City of Fellsmere, Florida, a Florida municipal corporation, whose mailing address is 22 South Orange Street, Fellsmere, Florida 32948 (hereinafter the "City") and Revize, LLC, a Michigan limited liability company, whose address is 150 Kirts Blvd, Suite B, Troy, MI 48084 ("REVIZE"), for certain products and services in connection with the City's website. The City and REVIZE may sometimes be referred to herein as "Party" or collectively referred to herein as the "Parties." May it be known that the undersigned Parties, for good consideration, do hereby agree to make the following additions and amendments that are outlined below. These additions and amendments shall be made valid as if they are included in the original Revize Web Services Sales Agreement. This Addendum and the Revize Web Services Sales Agreement shall collectively be referred to herein as the "Agreement."

1. **CONFLICT.** In the event there is a conflict or inconsistency between any of the requirements in this Addendum and the Revize Web Services Sales Agreement between the City and REVIZE, the Addendum will prevail to the extent of the conflict or inconsistency.

2. **SOVEREIGN IMMUNITY:** Nothing contained in the Agreement 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 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 City to be sued by third parties in any matter whether arising out of this Agreement or anything else whatsoever.

3. **PUBLIC RECORDS.** The City is a "public agency" subject to Chapter 119, Florida Statutes. REVIZE shall comply with all applicable public records laws:

1) **IF REVIZE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO REVIZE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 22 S. ORANGE STREET, FELLSMERE, FLORIDA 32948, (772) 646-6301, CITYCLERK@CITYOFFELLSMERE.ORG.**

2) REVIZE shall comply with the public records law, specifically to:

- a. Keep and maintain public records required by the City to perform under the Agreement.
- 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, F.S., 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 Agreement term and following completion of the Agreement if REVIZE does not transfer the records to the City.
- d. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of REVIZE or keep and maintain public records required by the City to perform under the Agreement. If REVIZE transfers all public records to the City upon completion of the Agreement, REVIZE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If REVIZE keeps and maintains public records upon completion of the Agreement, REVIZE 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.

3) Requests for public records shall be processed as follows:

- a. If REVIZE receives a request to inspect or copy public records relating to the City's Agreement with REVIZE, REVIZE 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 REVIZE of the request, and REVIZE must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- b. If REVIZE does not comply with the City's request for records, the City shall enforce the Agreement provisions in accordance with the Agreement.
- c. Should REVIZE fail to provide the public records to the City within a reasonable time, REVIZE may be subject to penalties under Section 119.10, Florida Statutes.

4) Failure of REVIZE to comply with these requirements shall be a material breach of this Agreement, for which the City shall have the right to immediately terminate the Agreement. This section shall survive the termination of the Agreement.

4. **SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

5. **NO JOINT VENTURE.** Nothing in the Revize Web Services Sales Agreement or this Addendum, or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the Parties.

6. **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.

7. **PROHIBITION AGAINST CONTINGENT FEES.** REVIZE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for REVIZE, 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 REVIZE any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

8. **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, as provided below:

For City: Mark Mathes, City Manager
 Maria Suarez-Sanchez, City Clerk
 22 S. Orange Street
 Fellsmere, FL 32948
citymanager@cityoffellsmere.org
cityclerk@cityoffellsmere.org

For REVIZE: Brain Rohen, Account Executive
 Revize, LLC
 150 Kirts Blvd, Suite B
 Troy, MI 48084
brian@revize.com

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 by 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.

9. **CITY AGENT.** Except as otherwise provided herein, the City Manager and the City Clerk of the City of Fellsmere shall be City's agents and shall have the authority to administer this Agreement on behalf of City, including, but not limited to the authority to provide notices to

REVIZE, and/or enforce or terminate the Agreement upon default of any terms of this Agreement by REVIZE.

10. **FURTHER ASSURANCES AND COOPERATION.** The City and REVIZE each agree 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.

11. **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.

12. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement with respect to the performance of each of the covenants and agreements contained in this Agreement.

13. **VENUE:** All parties agree that venue shall be proper in Indian River County for all legal or equitable proceedings on in the event of federal jurisdiction venue shall be in the United States District Court of the Southern District of the State of Florida, Fort Pierce Division.

14. **TERMINATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES.** REVIZE certifies that it and those related entities of REVIZE 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, REVIZE certifies that it and those related entities of REVIZE 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 REVIZE 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 REVIZE, 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.

15. **PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids or proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, independent contractor, consultant or auditor under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes,

for CATEGORY TWO for a period of 36-months from the date of being placed on the convicted vendor list

16. **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 REVIZE 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.

17. **NON-ASSIGNMENT:** REVIZE may not assign, sublicense, nor otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City. Any assignment, sublicense, or transfer occurring will be null and void; provided, however that City will at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to REVIZE. In the event that City approves transfer of REVIZE's obligations, REVIZE remains responsible for all work performed and all expenses incurred in connection with this Agreement.

18. **INDEMNIFICATION.** REVIZE 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 REVIZE and causing injury to any person or persons or property, whomsoever and whatsoever related to services provided by REVIZE pursuant to the Agreement in the amount of one million dollars (\$1,000,000) per occurrence. The specific considerations given for the promises of REVIZE set forth in this paragraph are the retention of REVIZE pursuant to the Agreement, and other good and valuable considerations and Ten Dollars (\$10.00) in hand paid by the City to REVIZE, receipt whereof hereby acknowledged, and the adequacy of which REVIZE 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.

19. **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.

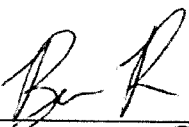
20. All other provisions in the Revize Web Services Sales Agreement between the City and REVIZE shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed on the date indicated below.

City of Fellsmere

Revize, LLC

By _____
Joel Tyson, Mayor
Date: _____

By:  _____
Print Name: Brian Rehen
Title: Account Manager
Date: 11-9-23

Revize Web Services Sales Agreement

This Sales Agreement is between Indian River Mosquito Control District, Florida ("CLIENT") and Revize LLC, aka Revize Software Systems, ("Revize"). Federal Tax ID# 20-5000179 Date: 12-8-2020

CLIENT INFORMATION:

Company Name: Indian River Mosquito Control District
 Company Address: 5655 41st Street
 Company City/State/Zip: Vero Beach, FL 32967
 Contact Name: _____
 Billing Dept. Contact: _____
 Client Website Address: http://fresh.irmosquito.com/

REVIZE LLC:

Revize Software Systems
 150 Kirts Blvd.
 Troy, MI 48084
 248-269-9263

The CLIENT agrees to purchase the following products and services provided by REVIZE:

<u>Quantity</u>	<u>Description</u>	<u>Price</u>
1	Phase 1: Project Planning and Analysis, SOW, onetime fee:	Included
1	Phase 2 – Discovery & Design from Scratch, onetime fee: <ul style="list-style-type: none"> • 1 mockup with up to 3 rounds of changes • Home page template and inner page design and layout. • Includes Responsive Web Design 	\$2,000
1	Phase 3 & 4 – Revize Template Development, onetime fee: <ul style="list-style-type: none"> • Set-up all CMS modules listed in this agreement • Integration with all 3rd party web applications 	\$3,000
1	Phase 5 – Quality Assurance Testing, onetime fee:	Included
1	Phase 6 –migration from old website into new website including spell checking and style corrections <ul style="list-style-type: none"> • Site map development/content development top tier department home pages • content migration from old website including spell checking and style corrections 	\$1,000
1	Phase 7 –Content Editing Training, onetime fee (online):	\$1,000
1	Phase 8 – Go Live:	Included
1	Revize Annual Software Subscription, Tech Support, CMS Updates, Website Hosting, 10GB website storage, 100GB/Month Bandwidth, SSL Certificate pre-paid annual fee:	\$1,975
1	Grand Total	\$8,975

Payment Schedule

Payment Amount	Includes
\$8,975	Year 1 Development and Annual Hosting- project start
\$1,975	Year 2 Annual Hosting & Maintenance
\$1,975	Year 3 Annual Hosting & Maintenance
\$1,975	Year 4 Annual Hosting & Maintenance

Terms:

1. Payments: All Invoices are due upon receipt. Work begins upon receiving initial payment.
2. Revize requires a check for \$8,975 to start this project
3. Additional content migration, if requested, is available for \$3 per web page or document.
4. Additional bandwidth is available at \$360 per year for each additional 50GB per month.
5. Additional website storage is available at \$1,000 per year for each additional 5GB website storage.
6. Governing Law and Jurisdiction. This Agreement shall be governed by, and construed under, the laws of the State of Florida
7. After year 1, client may terminate this Agreement at any time with or without cause upon providing Revize with written notice at least 30 days in advance of the termination date. If client terminates the Agreement, no refund of any portion of an annual bill paid in advance shall be refundable; no future payments shall be required.
8. If any third party ADA compliance tools are required in addition to the built in Revize ADA Checker tool (which enables you to detect issues as you load content), Revize will provide support to integrate any 3rd party software selected by The Mosquito Control District for no additional charge.
9. Both parties must agree in writing to any changes or additions to this Sales Agreement.
10. Client understands that project completion date is highly dependent on their timely communication with Revize. Client also agrees and understands that;
 - a. The primary communication tool for this project and future tech support is the Revize customer portal found at <https://support.revize.com>.
 - b. During the project, Client will respond to Revize inquiries within 48 hours of the request to avoid any delay in the project timeline.
11. Revize will provide a free redesign of the website in year 4 of the agreement. This assumes the District agrees to four consecutive years of annual software subscription, tech support, CMS updates, and hosting.
12. Client owns design, content, and will receive periodic updates to the CMS for the life of the contract.
13. Unless otherwise agreed, Revize does not migrate irrelevant records, calendar events, news items, bid results, low quality images, or data considered non-conforming to new website layout.

14. Storage is limited only to relevant website data.
15. a. Public Records. The Contractor shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that Contractor and the Agreement are subject to the requirements in Section 119.0701, Florida Statutes, Contractor shall:
 1. Keep and maintain public records required by the District to perform the services provided hereunder.
 2. Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of the Agreement and following completion of the Agreement if Contractor does not transfer the records to the District.
 4. Upon completion of the Agreement, Contractor shall transfer, at no cost, to the District all public records in the possession of Contractor or keep and maintain public records required by the District to perform the service. If Contractor transfers all public records to the District upon completion of the Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

If Contractor fails to comply with the requirements in this Public Records Section, the District may enforce these provisions in accordance with the terms of this Agreement. If Contractor fails to provide the public records to the District within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTRACTOR SHOULD CONTACT THE DISTRICT'S CUSTODIAN OF PUBLIC RECORDS: SHERRY BURROUGHS, BY TELEPHONE (772) 562-2393, E-MAIL: IRMCD@IRMOSQUITO2.ORG, OR MAIL: 5655 41ST STREET, VERO BEACH FL, 32967.

Enterprise Revize CMS License

As part of this agreement Revize Software Systems, LLC. provides to the Client a full Enterprise Revize CMS Software license. This software is a proprietary software built and maintained by Revize Software Systems LLC., and is intended to allow for the Client to easily update the content of their website. Client agrees that this license will only be used to maintain the websites included in this agreement. Sharing of the content management system, by the Client, with other entities not identified in this agreement is prohibited.

Revize will maintain, update, and host the Revize CMS during the contract period. In the event that the contract is terminated, for any reason, Revize will provide the latest version of the Revize CMS to the Client. This system will then have the ability to be hosted and used by the Client as long as they wish. Revize will provide reasonable support in transferring the CMS system to the Client's decided upon hosting architecture.

Products Client Owns Include:


- Revize CMS License
- Hosted Website
- Source Files
- All Included Revize Web Applications
- Design & Page Content

AGREED TO BY:

CLIENT

REVIZE

Signature of Authorized Person:



Name of Authorized Person:

Sherry Burroughs

Dylan Johnston

Title of Authorized Person

Director

Account Manager

Date:

12/31/2020

Please sign and return to:

dylan@revize.com

Fax 1-866-346-8880

Included Features:

The Following Applications & Features will be integrated into Your Website:

In addition to the Government Content Management System that enables non-technical staff to easily and quickly create/update content in the new web site, Revize provides a suite of applications and features specifically designed for municipalities. All of those apps and features are fully described in the following section. The applications and features are grouped into five categories:

- Citizen's Communication Center Apps
- Citizen's Engagement Center Apps
- Staff Productivity Apps
- Site Administration and Security Features
- Mobile Device and Accessibility Features

Citizen's Communication Center Apps

- Notification Center with Text/Email Alerts
- Bid Posting
- Document Center
- Email Notify
- FAQs
- News Center with Facebook/Twitter Integration
- Online Forms
- Photo Gallery
- Quick Link Buttons
- Revize Web Calendar
- "Share This" Social Media Flyout App
- Sliding Feature Bar
- Language Translator

Citizen's Engagement CENTER Apps

- Citizen Request Center with Captcha
- Online Bill Pay
- RSS Feed

Staff Productivity Apps

- Agenda Posting Center
- Image Manager
- iCal Integration
- Link Checker
- Menu Manager
- Online Form Builder
- Staff Directory
- Website Content Archiving
- Website Content Scheduling
- Newsletter App
- Intranet

Site Administration and Security Features

- Audit Trail
- Auto Site Map Generator
- Drag and Drop Menu Management
- Drag and Drop Picture Management
- Drag and Drop Document Management
- Dreamweaver Extension (Revize API)
- History Log
- Intranet (Secure Area)
- URL Redirect Setup
- Roles and Permission-based Security Mode
- Secure Site Gateway
- Unique Login/Password for each Content Editor
- Web Statistics and Analytics
- Workflows by Department

Mobile Device and Accessibility Features

- Font Size Adjustment
- WCAG 2.1 AA, Accessibility Button
- Alt-Tags
- Responsive Website Design (RWD)

Service Level Agreement

Maximum Response Times via Severity Level

- 1 hour for crisis issues
- 4-6 hours for critical issues
- 24 hours for normal issues

Crisis issues are defined as when a website error renders the CMS program or website completely unusable or nearly unusable or introduces a high degree of operational risk and no workaround is available. Till this every error is resolved, the website is essentially halted. A large number of users and or core program functionality a severely impacted.

Critical issues are defined as website errors that are an inconvenience or causes a consistent behavior of the website, which does not impede the normal functioning of the website. It could be an error that occurs consistently and affects non-essential functions and is an inconvenience which impacts a small number of users. May also contain visual errors for the graphical display of the website that is not ideal but still functioning correctly.

Normal issues are defined as an error that has a small degree of significance or is a minor cosmetic issue, or is a one-off case. A one-off case occurs when the error occurs and cannot be reproduced easily. These are errors that do not impact the daily use of the website. A low error is something that does not affect normal use, and can be accepted for a period of time, but user would eventually want changed.

Technical Support Escalation:

If an issue cannot be remedied by the Tech Support technician within 3 days, it will be escalated to the CTO, Ray Akshaya. If the problem is not resolved within 3 business days, then the Business Development Director, Joseph Nagrant, will assemble a team to work on the issue and have a conference call with the client explaining the resolution path the company will take to resolve the issue. If additional time is needed, the Business Development Director will contact the client and notify the client with an explanation and a follow up date as agreed by both the client and Revize.

Revize Support

- 8 a.m. – 8 p.m. EST Phone Support (Monday thru Friday)
- 24X7X365 Portal & Email Support
- Dedicated support staff to provide assistance and answer all questions
- Training refreshers
- Video tutorials and online training manual

Enterprise Revize CMS License

As part of this agreement Revize Software Systems, LLC. provides to the Client a full Enterprise Revize CMS Software license. This software is a proprietary software built and maintained by Revize Software Systems LLC., and is intended to allow for the Client to easily update the content of their website. Client agrees that this license will only be used to maintain the websites included in this agreement. Sharing of the content management system, by the Client, with other entities not identified in this agreement is prohibited.

Revize will maintain, update, and host the Revize CMS during the contract period. In the event that the contract is terminated, for any reason, Revize will provide the latest version of the Revize CMS to the Client. This system will then have the ability to be hosted and used by the Client as long as they wish. Revize will provide reasonable support in transferring the CMS system to the Client's decided upon hosting architecture.

Products Client Owns Include:


- Revize CMS License
- Hosted Website
- Source Files
- All Included Revize Web Applications
- Design & Page Content

AGREED TO BY:

CLIENT

REVIZE

Signature of Authorized Person:





Name of Authorized Person:

Sherry Burroughs

Dylan Johnston

Title of Authorized Person

Director

Account Manager

Date:

12/31/2020

12/31/2020

Please sign and return to:

dylan@revize.com

Fax 1-866-346-8880

Included Features:

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: February 1, 2024

Agenda Item No. 13(d)

☐ 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 amendments to the Professional Services Agreement with WPPAW

Approved by City Manager *M. D. [Signature]* Date: 1-28-24

Originating Department: Grants	Costs:	Attachments: Professional Services Agreement(s) with Amendments
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. On January 4, 2024, Council approved the Professional Services Agreement between WPPAW and the City of Fellsmere.

Copies of pages 3 and 4 of the original approved agreement showing the proposed tracked changes, and a clean version of the agreement incorporating the proposed changes are attached for review.

Staff requests that Council approve the following changes/amendments to the Agreement:

1. Funds shall be paid to Applied Webology in two equal amounts instead of one amount
2. The term of the Agreement for A Walk in the Past is changed
3. Language added regarding workers' compensation coverage exemption

- 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 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. \$25,000.00 shall be made payable to Applied Webology in the following manner: aA lump sum payment in the amount of \$12,500.00 shall be paid to Applied Webology upon Applied Webology's commencement of work under the project. The remaining \$2512,000\$500.00 shall be made payable paid 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 are created, launched, and available for use by the general public, - 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: (a) the fifth-year anniversary of the Commencement Date (for Applied Webology); and (b) July 31, 2024 for (A Walk in the Past).

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

If A Walk in the Past or Applied Webology are exempt from worker's compensation coverage, proof of exemption shall be submitted to the City in a form permissible to the City, in its sole discretion.

- 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 (for Applied Webology).
- 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.

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 meeting 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 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. Twenty five thousand and no/100 dollars (\$25,000.00) shall be made payable to Applied Webology in the following manner: a lump sum payment in the amount of twelve thousand five hundred and no/100 dollars (\$12,500.00) shall be paid to Applied Webology upon Applied Webology's commencement of work under the project. The remaining twelve thousand five hundred and no/100 dollars (\$12,500.00) shall be paid to Applied Webology after the mobile app and website are created, launched, and available for use by the general public. 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 Walk in the Past shall be compensated in an amount not to exceed twenty thousand and no/100 dollars (\$20,000.00) for the 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. A Walk in the Past shall be entitled to progress payments for such work by submitting invoices to the City on a monthly basis for the percentage of work completed during the preceding month.
- 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: (a) the fifth-year anniversary of the Commencement Date for Applied Webology; and (b) July 1, 2024 for A Walk in the Past.

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

If A Walk in the Past or Applied Webology are exempt from worker's compensation coverage, proof of exemption shall be submitted to the City in a form acceptable to the City, in its sole discretion.

- 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 \$100,000.00 each occurrence for bodily injury and \$50,000 each occurrence for property damage.
- iv. Professional Liability: Applied Webology shall maintain professional liability insurance at a minimum limit of \$1,000,000, including errors and omissions for any design work. Since A Walk in the Past is not providing professional services under this Agreement, it is exempt from this requirement.

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 Venutre.

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 international 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 or will be 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. Time Of Essence. Time is of the essence in this Agreement.

A WALK IN THE PAST PRODUCTIONS, LLC:

THE CITY OF FELLSMERE:

By:

Joel Tyson, Mayor

Print Name

Date

Title

Date

APPLIED WEBOLOGY, LLC:

By:

Print Name

Title

Date

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: February 1, 2024

Agenda Item No. 13(e)

☐ 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: Wetland Mitigation Credits for SW Lake and State Street Improvement Project

RECOMMENDED MOTION/ACTION: Approve Wetland Mitigation Credit Reservation and Sale Agreement

Approved by City Manager *Neaena* Date: 1-24-24

Originating Department:	Costs: \$14,400.00 Funding Source: Infrastructure	Attachments: 1. 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 Director <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 entered into a cost-share agreement with St. Johns River Water Management District ("SJRWMD") for the State Street Reservoir Expansion project. Because this project results in wetland impacts, in order to obtain the necessary permit(s) from SJRWMD, the City must reserve and purchase wetland mitigation credits to satisfy the conditions for issuance of said permit(s).

Lake Washington Mitigation Bank has provided an agreement for the issuance of the required wetland mitigation credits. The flat rate fee for purchase of these mitigation credits is \$16,000.00. A ten percent (10%) deposit has already been made to expedite the mitigation credit purchase.

Council is asked to approve the attached credit reservation and sale agreement in the amount of \$14,400.00.

WETLAND MITIGATION CREDIT RESERVATION AND SALE AGREEMENT

THIS WETLAND MITIGATION CREDIT RESERVATION AND SALE AGREEMENT (hereinafter referred to as this "Agreement"), is by and between LAKE WASHINGTON MITIGATION BANK, LLC, a Florida limited liability company (hereinafter referred to as "Seller"), and **CITY OF FELLSMERE** (hereinafter referred to as "Purchaser").

WITNESSETH:

WHEREAS, Seller owns a mitigation project located in Brevard County, Florida known as the Lake Washington Mitigation Bank (hereinafter referred to as the "Bank");

WHEREAS, the Bank is permitted by the St. Johns River Water Management District (hereinafter referred to as "SJRWMD") under SJRWMD Permit No. 135425-2 (hereinafter referred to as the "District Permit") and has wetland mitigation credits available for reservation and sale and the US Army Corps of Engineers (hereinafter referred to as the "Corps") under Corps Permit No. SAJ-2012-02069 (hereinafter referred to as the "Corps Permit") and has wetland mitigation credits available for reservation and sale

WHEREAS, Purchaser is undertaking the development and/or construction of the project known as **FELLSMERE SW LAKE AND STATES STREET IMPROVEMENT** and in connection therewith has applied for a certain permit from SJRWMD ERP Permit Application No. 63129-7 and FDEP ST404 Permit 31-0439746-001-SFG;

WHEREAS, as part of the approval process for such permits from SJRWMD and FDEP, it is anticipated that Purchaser will be required to purchase wetland mitigation credits to satisfy the conditions for issuance of the permits;

WHEREAS, Purchaser desires to reserve and purchase from Seller **Eight Hundredths (0.08)** state and federal freshwater herbaceous wetland credits (hereinafter referred to as "Credits") from the Bank, and Seller has agreed to reserve and sell to Purchaser such wetland mitigation credits, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

SECTION 1. AGREEMENT TO RESERVE AND PURCHASE CREDITS

Seller agrees to reserve and sell to Purchaser, and Purchaser agrees to purchase from Seller, the District and Corps Credits (hereinafter collectively referred to as the "Credits") from the Bank.

SECTION 2. PURCHASE PRICE AND METHOD OF PAYMENT

The purchase price (hereinafter referred to as the "Purchase Price") for the Credits shall be **Sixteen Thousand** Dollars and no cents (**\$16,000.00**). The Purchase Price is based on the following per credit price:

Two Hundred Thousand Dollars and no cents (**\$200,000.00**) for each SJRWMD credit.

The Purchase Price shall be paid by Purchaser to Seller as follows:

(a) **Earnest Money Deposit.** An earnest money deposit in the amount of **One Thousand Six Hundred** Dollars and no cents (**\$1,600.00**) (hereinafter referred to as the "Earnest Money Deposit") shall be paid by Purchaser to Seller within three (3) business days after the Effective Date (as that term is defined hereinbelow). The Earnest Money Deposit shall be non-refundable except in the event of a default by Seller. The term "Earnest Money Deposit" shall also include any additional funds deposited by Purchaser pursuant to section 3 hereinbelow to extend the Reservation Period (as that term is defined hereinbelow). At the Closing (as that term is defined hereinbelow), the Earnest Money Deposit shall be delivered to Seller and credited against the Purchase Price to be paid by Purchaser to Seller.

(b) **Cash Due.** The total Purchase Price shall be paid by Purchaser to Seller at the Closing in U.S. cash, check or by a completed bank wire transfer of immediately available funds to an account designated by Seller. In the event of payment by check, the completion of the Closing will be delayed, and the closing documents shall be retained and held by Seller, until the clearance of funds.

SECTION 3. RESERVATION OF CREDITS

So long as no later than 02/11/2024 Purchaser delivers to Seller the Credit Reservation Agreement signed by Purchaser and delivers the Earnest Money Deposit and have obtained the clearance of funds, Seller agrees to reserve the Credits for Purchaser and its project for a period of Ninety (90) days after the Effective Date (herein referred to as the "Reservation Period"). Broker will send a Notice of Credit Reservation to SJRWMD and the Corps in the form required by SJRWMD and the Corps. Purchaser shall have the right and option to extend the Reservation Period for an additional Ninety (90) days by delivering written notice thereof to the Broker together with an addition to the Earnest Money Deposit in the amount **One Thousand Six Hundred** Dollars and no cents (**\$1,600.00**) on or before the expiration of the Reservation Period.

SECTION 4. COVENANTS OF SELLER

Seller covenants and agrees that it shall comply with all conditions and continuing requirements as set forth in the management plan for the Bank approved by SJRWMD and the Corps. Responsibility for the compliance as to mitigation for the Bank site shall solely be the responsibility of Seller. The provisions of this section shall survive the Closing.

SECTION 5. CLOSING

At the Closing, Seller shall execute and deliver to Purchaser, simultaneously with payment of the Purchase Price as provided for herein, an Assignment of Wetland Mitigation Credits assigning the Credits to Purchaser and such documentation as may be required by SJRWMD and the Corps to effectuate the transfer of the Credits from Seller to Purchaser. Purchaser shall deliver the Purchase Price to Seller and any permit documentation as may be required by SJRWMD and FDEP to effectuate the transfer of the Credits from Seller to Purchaser.

SECTION 6. NOTICE

Wherever any notice is required or permitted hereunder, such notice shall be in writing and shall be delivered in person or sent by registered or certified mail, return receipt requested to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith.

IF TO SELLER: Lake Washington Mitigation Bank, LLC
Attn: Monika Kosc
P.O. Box 149386
Orlando, FL 32814-9386
koscmonika@gmail.com

With a copy to: EcoCredit Marketing
Attn: Kae Hovater
614 East Highway 50, #254
Clermont, Florida 34711
kae@ecocreditmarketing.com

IF TO PURCHASER: City of Fellsmere
22 S. Orange Street
Fellsmere, FL 32948-6700

With a copy to: Eric Muldowney
E-Reg Consulting, LLC
1915 Cypress Lake Drive
Grant-Valkaria, FL 32949

SECTION 7. MISCELLANEOUS

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Facsimile or electronically transmitted copies of this Agreement and the signatures thereon shall have the same force and effect as if the same were original documents. Facsimile or electronically transmitted signatures are acceptable and shall be deemed to be original signatures. This writing constitutes the entire agreement between the parties and supersedes and merges all prior oral or written agreements, representations, statements, proposals and undertakings between the parties regarding the subject matter hereof. No covenants, agreements, terms, provisions, undertakings, statements, representations or warranties, whether written or oral, made or executed by any party hereto or any employee or agent thereof, shall be binding upon any party hereto unless specifically set forth in this Agreement. This Agreement or any provision hereof may be amended or waived only by written agreement signed by both parties. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent or employer and employee relationship between the parties. No provision in this Agreement shall provide to any person not a party to this Agreement any remedy, claim or cause of action, or create any third-party beneficiary rights against either party. In the event that any one or more of the provisions in this Agreement shall for any reason be held to have no force and effect, this Agreement shall, if possible, be interpreted in a manner so as to effectuate the intention of the parties. This Agreement is the subject of

negotiation between the parties and should not be interpreted more favorably toward one party over the other. The section headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; the section headings shall be ignored in construing and interpreting this Agreement. Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders. Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive. Neither party may assign this Agreement without the prior written consent and approval of the other party (and if required by them, the approval of SJRWMD and the Corps). No party shall be responsible for failure or delay in performance hereunder if such delay or failure in performance is caused by conditions beyond such party's reasonable control, including without limitation fire, flood, riot, strikes, labor disputes, acts of God or of the public enemy, war or civil disturbances, or any future laws, rules, regulations or acts of any government (including any orders, rules or regulations issued by any official or agency of such government). All disputes related to this Agreement shall in the first instance be referred to the appropriate executives of each party for resolution. In connection with any litigation, including appellate proceedings, arising out of or under this Agreement, the prevailing party in such litigation shall be entitled to recover such party's out-of-pocket costs and reasonable attorneys' fees. This Agreement and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida.

SECTION 8. EFFECTIVE DATE

For the purposes of this Agreement, the “Effective Date” of this Agreement shall mean the date of the signature of the last of Seller and Purchaser to sign this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date shown above the signature of each.

SELLER:

LAKE WASHINGTON MITIGATION
BANK, LLC

By: _____
Monika Kosc, Manager

Date: _____, 2024

PURCHASER:

CITY OF FELLSMERE

By: _____

Date: _____, 2024

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: February 1, 2024

Agenda Item No. **#13(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: Engineering services for Planning, Design and Permitting of the Southern Bypass

RECOMMENDED MOTION/ACTION: Approve proposal for EXP US Services ("EXP")

Approved by City Manager *Warren Dill* Date: 1-24-24

Originating Department:	Costs: \$20,000.00 Funding Source: Infrastructure	Attachments: 1. Proposal
Department Review: <input checked="" type="checkbox"/> City Attorney Warren Dill <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance <input type="checkbox"/> Utility Director <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 wishes to apply for a grant from the US Department of Transportation Rebuilding American Infrastructure with Sustainability and Equity ("RAISE") for the necessary planning efforts associated with the Southern Bypass. Southern Bypass is currently a priority project for the City of Fellsmere and has been identified on the Indian River County Metropolitan Planning Organization (MPO) Long Range Transportation Plan (LRTP) as a Roadway Needs Project. The proposed two-lane facility, with a shared-use path, connects CR-512 to SR-60, creating an approximately 10-mile corridor parallel to I-95.

EXP has provided a proposal for the development of a competitive RAISE grant application. The flat rate proposal for these application services is \$20,000.00. This proposal will be paid for with local funds. Staff will provide a separate agenda request for permission to apply to this grant program at the February 15, 2024 Council meeting.

Council is asked to approve the proposal from EXP in the amount of \$20,000.00.

CITY OF FELLSMERE

WORK ORDER NO. 1

NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT

Professional EXP US Services

Project Title: RAISE Grant Application – Southern Bypass

Type of Work (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> General Consulting | <input type="checkbox"/> Preliminary Design (30%) |
| <input type="checkbox"/> Code Plan Review | <input type="checkbox"/> Design Development (60%) |
| <input type="checkbox"/> Ordinance/Rule Development | <input type="checkbox"/> Construction Documents (100%) |
| <input type="checkbox"/> Studies and Reports | <input type="checkbox"/> Bid Services |
| <input type="checkbox"/> Expert Witness | <input type="checkbox"/> Construction Engineering Inspection |
| <input checked="" type="checkbox"/> Other – Development of Grant Application | <input type="checkbox"/> 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 \$20,000.00 without prior written consent.

Professional

City of Fellsmere

(signature)

(signature)

(print Name & Title)

(print name & Title)

Date: _____



Consultant Work Order Proposal

December 28, 2023

Mr. Mark Mathes
City Manager
City of Fellsmere
22 S. Orange Street
Fellsmere, FL 32948-6740

Re: RAISE Grant Application – Southern Bypass

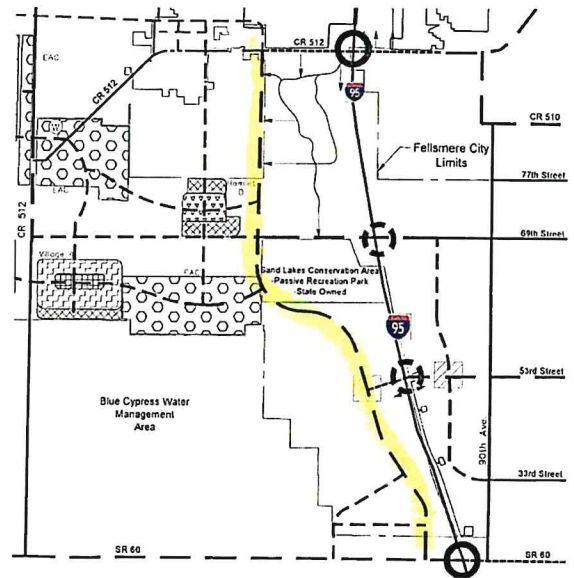
Dear Mr. Mathes:

EXP US Services (“EXP”) is pleased to submit this letter of agreement (the “Agreement”) to the City of Fellsmere (“Client”) for professional services for the above referenced project. The proposed professional services will be provided in accordance with the terms and conditions set forth herein.

I. General

EXP understands the Client has requested a proposal to provide professional services for the development of a competitive Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant application for the necessary planning efforts associated with the Southern Bypass. Southern Bypass is currently a priority project for the City of Fellsmere and has been identified on the Indian River County Metropolitan Planning Organization (MPO) Long Range Transportation Plan (LRTP) as a Roadway Needs Project. The proposed two-lane facility, with a shared-use path, connects CR-512 to SR-60, creating an approximately 10-mile corridor parallel to I-95.

The City of Fellsmere has requested a proposal from EXP to assist in developing a Planning RAISE Grant Application for the project. We have structured our proposal to be consistent with the processes required by Local, State, and Federal requirements. Our proposed scope of services, schedule, and fee are as follows:



II. Scope of Work

For the Project described above, EXP shall provide the following professional services:

Task 1. (A through F) Develop a Planning RAISE Grant Application for the Southwest Bypass

The CONSULTANT shall prepare a Planning RAISE Grant Application. The application will include language and material for the following submittal requirements:

A. Project Information Form

The CONSULTANT shall complete the FY 2024 RAISE Project Information Form with the assistance of input from the City of Fellsmere.

B. Funding Commitment Documentation

The CONSULTANT, with the help of the City staff, shall identify and document any funding committed to the project.

C. Project Description

The CONSULTANT shall develop the Project Description narrative language, providing the overview of the project for federal review.

D. Project Location File

The CONSULTANT shall develop a project location file in Shapefile, GEOJSON, or KML/KMZ format to include with the application package.

E. Project Budget

The CONSULTANT shall work with the City to develop an anticipated project budget for inclusion with the application package.

F. Merit Criteria

The CONSULTANT shall identify and provide narrative language associated with the merit of the project and the local impacts it has, considering the following categories:

F.1. Safety

The CONSULTANT shall develop language addressing the safety impacts associated with the project. This will help to understand the effects of the new corridor as it relates to the number, rate, and severity of surface transportation-related crashes, injuries, and fatalities.

F.2. Environmental Sustainability

The CONSULTANT shall document the anticipated environmental and sustainability impacts associated with the project, such as the potential reduction in transportation-related air pollution and greenhouse gas emissions.

F.3. Quality of Life

The CONSULTANT shall identify quality of life benefits associated with the project. This will consider affordable transportation alternatives, reduction in cost burdens associated with mixed-use development, and increased accessibility to destinations like jobs, healthcare, grocery stores, schools, places of worship, and recreation.

F.4. Mobility & Community Connectivity

The CONSULTANT shall develop language identifying the benefits associated with the connectivity, accessibility, and activation of areas within the community as a result of the project.

F.5. Economic Competitiveness and Opportunity

The CONSULTANT shall develop language identifying the project benefits as they contribute to the overall growth, prosperity, and well-being of the City of Fellsmere and Indian River County communities.

F.6. State of Good Repair

The CONSULTANT shall provide language detailing benefits associated with the project considering design, construction, and associated operation and maintenance costs.

F.7. Partnership & Collaboration

The CONSULTANT shall identify and document any partnership and collaboration with local, regional, and national partners associated with the project.

F.8. Innovation

The CONSULTANT shall identify new transportation technologies associated with the project, such as micro-mobility, connected or autonomous vehicles, and real-time data collection.

F.9. Project Readiness

The CONSULTANT shall develop the narrative describing the City's preparedness to move the proposed project forward once it receives a RAISE grant. This will include language highlighting the City's ability to begin the project in a timely manner while meeting both obligation and expenditure deadlines.

Deliverables

The following deliverables will be produced:

- **RAISE Grant Application**

III. Reporting

The CONSULTANT shall meet with the City Project Manager, as requested, to provide updates on each stage of the application, as well as coordinate and participate in discussions with public officials if needed.

The CONSULTANT shall submit timely monthly invoices electronically with corresponding progress reports to document and support the work completed for approval by the City Project Manager.

IV. Client Responsibilities

It is understood that EXP will perform services under the sole direction of the Client or his designated representative. In the performance of these services, EXP will coordinate its efforts with those of other project team members and consultants as required.

The Client shall provide EXP with all project related information available including any existing land plan, property legal description, title work, boundary and topographic surveys, geotechnical investigation reports, environmental reports, permit application fees, etc. EXP will rely upon the accuracy and completeness of all Client furnished information in connection with the performance of services under this agreement.

V. Length Of Service

It is anticipated that a duration of ten (10) weeks from Notice to Proceed is sufficient to complete all work required within this scope of services.

VI. Fee Estimate/Method of Compensation

This Work Order will be complete for a lump sum amount of **\$20,000.00**. The method of compensation will be in accordance with Exhibit B of the Standard Professional Service Agreement.

VII. Compensation

EXP will perform the above-mentioned services on a time and expense basis for a lump sum fee of **\$20,000.00**. Invoicing will be based on current contract hourly rates in effect at the time of work effort. If additional funds become necessary, EXP will notify CITY of such, prior to exceeding the initial budget or subsequent amended budget. Invoices shall show the separate developments as 'Phases' with additional phases added upon reviews of other/future developments. The City shall not be liable for any fee, cost, expense or reimbursable expense or other compensation beyond this amount unless approved in a supplemental Work Order. Said fee includes an allowance for Reimbursable Expenses required in connection with the Work, which shall not exceed \$1,000.00. Said Reimbursable Expenses shall be used in accordance with the Agreement Provisions and shall conform to the limitations of Florida Statutes § 112.061.

⁴Remaining portion of page intentionally left blank⁴

VIII. Additional Services / Exclusions

The City may establish an allowance for additional services requested by the City and for unforeseen circumstances, which shall be utilized at the sole discretion of the City.

If an unforeseen issue should arise in any of the following tasks, the Consultant remains available to provide additional services as requested by the Client based on our hourly rates. Any scope not anticipated, EXP can provide an additional scope of work. Services not included under this agreement include:

- Benefit Cost Analysis (BCA)
- Public Involvement
- Turning Movement Count Data Collection
- Preparation of traffic signal modification plans
- Preparation of traffic signal timing plans
- Preparation of roadway construction plans
- Preparation of signal location plans
- Additional capacity analysis
- Construction plans development
- Permitting
- In-person coordination meetings with agencies
- Offsite improvements to the public roadway, pavement markings, drainage, water and sewer infrastructure that may be required by the local jurisdictional agency are not included.
- Wetland mitigation is not included
- Floodplain mitigation is not included
- Environmental, civil, geotechnical, architectural, landscape, Certified Arborist, MEP, structural, or survey services are not included

* Remaining portion of page intentionally left blank *

IX. Contract Approval

Submitted by:
EXP U.S. Services, Inc.



Signature

Patrick J. Russell, PE; Project Manager
Name & Title

December 28, 2023
Date

City of Fellsmere
Dept. Approval:

Signature

Mark Mathes; City Manager
Name & Title

Date

Work Order No.: _____

(Assigned by the City upon approval, if applicable)

**City of Fellsmere City Council
Agenda Request Form**

#13(g)

Meeting Date: February 1, 2024

- | | |
|---|--|
| <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: An amendment to change the City of Fellsmere Official Zoning Map from C-2, General Commercial to (PDD) to allow for a Storage and Maintenance Facility with associated offices, parking, and commercial vehicle maintenance activities on site.

RECOMMENDED MOTION/ACTION: Conduct 1st Reading for Ordinance #2024-06 and set a 2nd Reading and Public Hearing date for February 15, 2024.

Approved by City Manager *Michael M. [Signature]* **Date:** 1.24.24

Originating Department: Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments: 1. CC Ordinance. #2024-06 2. CC Reso #2024-16
Department Review: <input checked="" type="checkbox"/> City Attorney _____ <input checked="" type="checkbox"/> Comm. Dev. _____	<input 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 <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: The applicant, Mr. John Brown of Teagan LLC, owns a property addressed as 12201 CR-512. The 5.37-acre site currently has a GC, General Commercial future land use designation. The applicant is seeking to rezone the property from C-2, General Commercial, to PDD- Planned Development. The applicant is seeking to develop the property into a storage and maintenance facility for commercial vehicles. The project consists of a 3,750 square foot building with offices and associated parking and maintenance related activities. All maintenance activity is behind a fence or is contained within the building and not readily visible to the public. The site also will be utilizing both natural and new landscaping along to effectively shield the view into the rear work areas. The project is consistent with the Comprehensive Plan and all concurrency requirements of the City.

The formal item to approve the Final Development Plan will be brought forward with the public hearing for the rezoning. Zoning action must predate action on the Final Development Plan.

Informational Only:

The applicant will be requesting site specific design relief approved for in Section 4 of Resolution #2024-16 for the Final Development Plan and entails the following:

- Section 9.3(A)(1) & 9.3(A)(4) Relief from the Architectural Standards regulations as these provisions were created to have specific building design criteria for structures that front the CR-512 corridor. The proposed building lies approximately 330' south of the CR-512 corridor and would not adversely affect the overall design aesthetic which is normally required as a result of the district regulations. The relief requested would only apply to this project site, with any additional structures that front CR-512 meeting the General District regulations for architectural design.
- Section 9.3(B)(3)(d) Relief from the service doors to be located only at the rear of the proposed structure.
- 9.3(C)(10) Relief from the Building foundation planting requirements- but only from the rear and sides of the building as these areas are designed for heavy vehicular traffic.
- Section 9.3(G) Deferral from the Civic Space Requirement as this site is technically not developed to engage the active CR-512 corridor. A Civic Space Requirement that will meet City of Fellsmere standards will be constructed at the time that the norther outparcel is developed along the CR-512 road frontage.
- Section 9.3(H) Deferral from the Public Frontage and throughfare standards. Additional inter-connection sidewalks and driveways to internal and adjacent properties will be constructed at the time that the northern outparcel is developed along the CR-512 frontage corridor.
- Section 9.4(H)(7)(b) Deferral to the construction of a sidewalk along CR-512 until such a time as an outparcel to the norther is developed along the CR-512 road frontage.
- Section 9.7(A)(1) Relief from the proposed building to be oriented toward CR-512. The site as proposed lies approximately 330' from the CR-512 corridor. The applicant intends to create a secondary driveway perpendicular to CR-512 that the building will be oriented toward.

The following Conditions of Approval will be required at the time of the final adoption of Resolution #2024-16. Reference Section 3(9) through (23). of the Resolution:

- The applicant will sign a five (5') foot wide Limited Access Easement to regulate access to CR-512 immediately upon request of Indian River County or the City.
- If the development is ever removed or destroyed, the relief requested above shall cease.
- The applicant shall immediately upon request of the City enter into a Non-Exclusive Cross Access and Drainage Easement with the City for cross parking access and drainage all without charge to the city.
- The applicant shall construct a connection to CR-512 to all Indian River County standards and requirements located to the east side of the property.
- The applicant shall be required to design and receive a County permit for a left turn lane from CR-512 at the proposed access location.
- The applicant shall convey to the City without charge a ten (10') wide strip of land lying at the north property line and adjacent and parallel to County Road along CR-512 as required for its future expansion and deliver same to the City Clerk- see exhibit 'C'
- All landscaping shall meet the CR-512 Frontage overlay district standards at the time of planting. All landscaping shall be maintained in perpetuity by the Applicant.
- The applicant shall provide additional landscaping along the entire length of the west property line to effectively screen the property from adjacent developments with a 'Type "A"' buffer screen.
- 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 effective date of the Resolution.
- The applicant shall install lighting at the entryway of the property near CR-512 with the requirements of Section 7.13 of the Land Development Code.

**ORDINANCE
NO. 2024-06**

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 C-2 GENERAL COMMERCIAL TO PDD-PLANNED DEVELOPMENT DISTRICT FOR LAND HAVING A COMPREHENSIVE FUTURE LAND USE MAP DESIGNATION OF GENERAL COMMERCIAL (GC) CONTAINING 5.20 ACRES, MORE OR LESS, LOCATED AT 12201 COUNTY ROAD 512, ON THE EAST SIDE OF OPERATION HOPE FOR A STORAGE AND MAINTENANCE BUILDING OWNED BY TEAGAN, LLC, A FLORIDA LIMITED LIABILITY COMPANY; 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.

WHEREAS, Teagan, LLC, a Florida limited liability company, the owner of the land described herein, (the "Applicant") filed an Application with the City of Fellsmere to amend the City's Official Zoning Map to incorporate said land thereon as PDD-Planned Development District; and

WHEREAS, the Applicant owns 5.20 acres, more or less with a Future Land Use Map designation of General Commercial (GC), as described on Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, The Applicant has petitioned the City to amend the City's Official Zoning Map to a zoning district of Planned Development District (PDD) for said land; and

WHEREAS, the Planning and Zoning Commission/Local Planning Agency held a duly noticed public hearing on _____, 2024, and made a finding that the Planned Development District (PDD) zoning designation was consistent with the Comprehensive Plan and applicable provisions of the Land Development Code and recommended that the City Council approve the zoning request; and

WHEREAS, the City Council held a duly advertised public hearing, made a finding that the PDD zoning designation was consistent with the Comprehensive Plan and applicable provisions of the Land Development Code; and

WHEREAS, the City Council has determined that the PDD zoning is in the best interest of the public health, safety, environmental and general welfare and that it is appropriate to adopt this amendment to the Official Zoning Map.

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. CONSISTENCY WITH THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE. The Application to amend the City's Official Zoning Map is consistent with the Comprehensive Plan, Section 17.15 A. 5. of the Land Development Code and other applicable provisions of the Land Development Code all of the City of Fellsmere. The following additional findings of facts are made:

1. The amendment is not in conflict with any applicable portions of the Land Development Code;
2. The amendment is consistent with all elements of the City of Fellsmere Comprehensive Plan;
3. The amendment is consistent with existing and proposed land uses within the area;
4. The surrounding land uses in the area of the amendment support the amendment;
5. The amendment would not result in excessive demands on public facilities, and the amendment would not exceed the capacity of such public facilities, including but not limited to transportation facilities, sewage facilities, water supply, parks, drainage, schools, solid waste, mass transit and emergency medical facilities;
6. The amendment would not result in significant adverse impacts on the natural environment;
7. The amendment would result in an orderly and logical development pattern;
8. The amendment would not be in conflict with the public interest, and is in harmony with the purpose and interest of the Land Development Code.

SECTION 3. ZONING. The following described land is hereby given a City Zoning Classification of PDD-Planned Development District.

LEGAL DESCRIPTION

See Exhibit "A" attached hereto and by this reference made a part hereof.

SKETCH OF LEGAL DESCRIPTION

See Exhibit "A" attached hereto.

SECTION 4. ZONING MAP. The Official Zoning Map of the City shall be amended to include the subject land and reflect the designated zoning district.

SECTION 5. 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 6. CONFLICT. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of conflict.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its 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 Herrera	_____
Council Member Inocensia Hernandez	_____
Council Member Gerald Renick	_____
Council Member Jessica Salgado	_____

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

CITY OF FELLSMERE, FLORIDA

ATTEST:

Joel Tyson, Mayor

Maria Suarez-Sanchez, CMC, City Clerk

I HEREBY CERTIFY that Notice of the public hearing 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 the second reading and public hearing was held on the _____ day of _____, 2024.

Maria Suarez-Sanchez, CMC, City Clerk

EXHIBIT "A"
TO
ORDINANCE NO. 2024-06
AND
RESOLUTION NO. 2024-16

That part of Tract 1646 lying South of State Road 512 (Fellsmere Road) and that part of Tract 1647 lying North of Fellsmere Farms Drainage District Canal No. 16. Fellsmere Farms Company Subdivision of unsurveyed Township 31 South, Range 37 East, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for St. Lucie County, Florida recorded in Plat Book 2, Page 1 and 2, said lands situate, lying and being in Indian River County, Florida.

LESS AND EXCEPT the East 100 feet of the above-described lands. Also, less the West 383.48 feet of both Tracts 1646 and 1647.

RESOLUTION NO. 2024-16

A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, APPROVING THE FINAL DEVELOPMENT PLAN FOR A PLANNED DEVELOPMENT CONSISTING OF 5.20 ACRES, MORE OR LESS OWNED BY TEAGAN, LLC FOR A STORAGE AND MAINTENANCE BUILDING LOCATED AT 12201 COUNTY ROAD 512 ON THE EAST SIDE OF OPERATION HOPE 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.

WHEREAS, Teagan, LLC, a Florida limited liability company, the owner of the land described herein, (the “Applicant” or “Owner”) filed an Application with the City of Fellsmere for a Final Development for a storage and maintenance building (the “Project”); and

WHEREAS, the Applicant owns 5.37 acres, more or less, as described on Exhibit “A” attached hereto and by this reference made a part hereof (the “Property”); and

WHEREAS, the Applicant submitted an Application for Planned Development District Zoning, for the development of a storage and maintenance building on the Property, to be adopted along with the Final Development Plan; and

WHEREAS, the Planning and Zoning Commission/Local Planning Agency held a duly noticed public meeting on _____, 2023 to review the Final Development Plan for the Project and determined that it is in conformance with the official plans and policies of the City and the requirements of Article XVII Section 17.15 of the Land Development Code and recommended that the City Council approve the Final Development Plan; and

WHEREAS, the City Council has determined at a duly advertised public hearing that the Final Development Plan is in the best interest of the public health, safety, environmental and general welfare and that it is appropriate to approve the Final Development Plan subject to the conditions contained herein.

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 by the City Council.

SECTION 2. CONSISTENT WITH THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE. The Final Development Plan for the Project meets the provisions of the Comprehensive Plan and Land Development Code Section 17.15. The following additional findings of fact are made:

- a. There are adequate public facilities to service the proposed use and complies with Section 17.24 Concurrency Management of the Code.
- b. There is adequate fire protection to service the proposed use.

- c. Ingress and egress to Property and proposed structures are adequate with reference to automotive and pedestrian safety, traffic flow and control, provision of services, and access in case of fire or catastrophe.
- d. Off-street parking areas are adequate with conditions imposed, with attention to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, convenience to the units it is designed to serve, and landscaping for the buffering of abutting property where applicable.
- e. Recreation and open spaces are adequate, with attention to the location, size and development of the areas in regard to their adequacy, their effect on privacy of adjacent living areas, and their relationship to community wide open spaces and recreation facilities.
- f. Density of development is adequate, within the framework of the permitted density.
- g. General character and compatibility are adequate, with reference to ensuring the proposed development will be designed so as not to cause substantial depreciation of property values or reduce the safety, light and general convenience of neighboring developments.
- h. The environmental impact of the development is acceptable on the total land area of the Property including how development will affect protected species, wetlands, surficial aquifer recharge areas, physical features, and natural resources.
- i. Renderings, architectural elevations, or photographs of the proposed development are adequate.
- j. Water and sewer improvements are in accordance with standards and specifications of the City.
- k. The Final Development Plan provides for dedication of the necessary rights-of-way.

SECTION 3. FINAL DEVELOPMENT PLAN APPROVAL WITH CONDITIONS.

The Final Development Plan dated May, 2023 prepared by Carter Associates, INC. as signed by the Mayor on , 2023 and maintained on file in the Community Development Department and City Clerk's office is approved. The following conditions shall apply.

- 1) The use, occupancy, development, phasing or redevelopment of the Property shall be limited to and in accordance with the Final Development Plan attached as Exhibit "B", and by this reference made a part hereof. Where specific provisions in this Resolution or in the Land Development Code are not addressed on the Final Development Plan, the specific provisions of this Resolution or in the Land Development Code shall apply to the development of the Property.
- 2) 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 order 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.

- 3) 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, upon notice to the Applicant and the property owner, to review the activity for compliance with all conditions and requirements of approval and all applicable ordinances and resolutions of the City. If the land use of the Property is not in compliance with the use specified in the approved Planned Development and the conditions in this Resolution, the City Council may amend the Conditions of Approval, terminate the Planned Development Permit or refer the matter to the Code Enforcement Special Master as a code violation for other sanctions as deemed appropriate.
- 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) 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.
- 6) Relief from the following Sections of the Land Development Code are approved until major redevelopment or the occurrence of the stated activity as determined by the City:
 - A. 9.3(A)(1) and 9.3(A)(4) Relief from the Architectural Standards regulations as these provisions were created to have specific building design criteria for structures that front CR-512. The proposed building lies approximately 330' south of the CR-512 corridor and would not adversely affect the aesthetic corridor being created by the General District regulations. The relief would only apply to this project site, with any additional structures that front CR-512 meeting the General District regulations for architectural design.
 - B. 9.3(B)(3)(d) Relief from the service doors to be located only at the rear of the proposed structure.
 - C. 9.3(C)(10) Relief from the Building foundation planting requirements but only from the rear and sides of the building since these areas are designed for heavy vehicular traffic.
 - D. 9.3(G) Deferral from the Civic Space Requirement since the site is technically not developed to engage the active CR-512 corridor. A Civic Space that will meet City of Fellsmere standards will be constructed at the time the northern outparcel is developed along the CR-512 road frontage.

- E. 9.3(H)Deferral from the Public Frontage and throughfare standards. Additional inter-connecting sidewalks and driveways to internal and adjacent properties will be constructed at the time the northern outparcel is developed along the CR-512 frontage.
 - F. 9.4(H)(7)(b) Deferral to the construction of a sidewalk along CR-512 until such a time as an outparcel to the north is developed along the CR-512 road frontage.
 - G. 9.7(A)(1) Relief from the proposed building to be oriented toward CR-512. The site as proposed lies approximately 330' from the CR-512 corridor. The applicant intends to create a secondary driveway perpendicular to CR-512 that the building will be oriented toward.
- 11) The Applicant shall provide an electronic as-built plan to the City within ninety (90) days of receiving a Certificate of Completion for the Project in a form acceptable to the City.
 - 13) The Applicant shall sign a five (5) foot wide Limited Access Easement to regulate access to CR512 immediately upon request of Indian River County or the City.
 - 14) If the building is ever removed or destroyed, all of the above relief in Section 8 shall immediately cease.
 - 15) Prior to issuance of a Certificate of Completion/Occupancy the Applicant shall:
 - a. Immediately upon request by the City enter into a Non-Exclusive Cross Access and Drainage Easement with the City for cross parking, access and drainage all without charge to the city. The drainage easement to the City shall be over the entire perimeter landscape areas, dry retention, and wet pond areas of the site for future use in support of CR512 widening and regional stormwater system.
 - b. Construct a connection to CR512 to all Indian River County standards and requirements located to the east side of the Property;
 - c. Applicant shall design and receive a County permit for a left turn lane from CR512 at the proposed access location.
 - 16) Prior to the public hearing for this Resolution the Applicant shall convey to the City without charge a ten foot (10') wide strip of land lying at the north property line and adjacent and parallel to County Road along CR-512 as required for its future expansion, and deliver same to the City Clerk. As more particularly described in Exhibit "C" attached hereto.
 - 17) All landscaping shall meet the CR-512 Frontage overlay district standards at time of planting. All landscaping shall be maintained in perpetuity by the Applicant.
 - 18) Pursuant to 9.7(C)(4) The applicant shall provide additional landscaping along the entire length of the west property line to effectively screen the Property from adjacent development(s) with a 'Type A' buffer screen.
 - 19) 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 effective date of this Resolution.

- 20) Applicant shall install street lighting at the entryway of the Property near CR-512. Upon installation, the City shall be responsible for all operational and maintenance costs associated with the street light.
- 21) Mr. and Mrs. Lilly hold a Corrective Mortgage Deed on the Property and have signed a Mortgage Joinder and Consent and Partial Release of Corrective Mortgage accepting the Final Development Plan and Warranty Deed to the City for CR512 widening. See Exhibit "D".
- 22) 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.
- 23) 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 supersede this provision.

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. 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. EFFECTIVE DATE. This Resolution shall take effect concurrently with the effective date of Ordinance No. 2024-06. If Ordinance No. 2024-06 does not become effective, this Resolution shall automatically become void and of no further force or effect.

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 Inocensia Hernandez	_____
Council Member Gerald Renick	_____
Council Member Jessica Salgado	_____

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

CITY OF FELLSMERE, FLORIDA

ATTEST:

Joel Tyson, Mayor

Maria Suarez-Sanchez, CMC, City Clerk

HEREBY CERTIFY that Notice of the public hearings on this Resolution was published in the Press Journal, as required by the Land Development Code, that the foregoing Resolution was duly passed and adopted on the _____ day of _____, 2024, and the first reading was held on the _____ day of _____, 2024, and the second reading and public hearing was held on the _____ day of _____, 2024.

Maria Suarez-Sanchez, CMC, City Clerk

2023.12.19 Matter No. 23-018 Resolution 2024-16

EXHIBIT 'A' LEGAL DESCRIPTION OF PROPERTY - STORAGE AND MAINTENANCE

FELLSMERE FARMS COMPANY S/D OF UNSURVEYED TWP 31 S RNG 37 E PBS 2 - 1
& 2 MORE PART DESC AS THAT PART OF TR 1646 LYING S OF SR 512 AND THAT
PART OF TR 1647 LYING N OF FELLSMERE FARMS DRAINAGE DISTRICT CANAL NO
16 LESS AND EXCEPT THE E 100 FT OF THE ABOVE DESC LAND ALSO LESS THE W
383.48 FT OF BOTH TRS 1646 AND 1647

[illegible]

61 401423
2001 12 21 12:17:53

RANGE 17 EAST

EXHIBIT "C"
TO
RESOLUTION NO. 2024-16
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 _____, 2023, by Teagan, LLC, a Florida limited liability company, whose address is 9720 146th Ave, Fellsmere, Florida 32948, hereinafter collectively 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, 2022.

Minimal documentary stamps are affixed hereto, because this conveyance is pursuant to the issuance of a development order. There are no open mortgages encumbering this property.

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

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT "C"

Signed, sealed and delivered
in our presence:

WITNESSES AS TO BOTH:

Sign: _____
Print: _____

Sign: _____
Print: _____

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 _____, 2023, by _____, 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: _____

NOTICE

In preparation of this instrument, the scrivener has not examined title to the described property and makes no warranty, representation or opinion,
either express or implied as to the title, quantity or boundaries of the property or the existence of any liens, unpaid taxes, or other encumbrances.

Matter No. 23-018

BK: 3280 PG: 1174

EXHIBIT "A"

That part of Tract 1646 lying South of State Road 612 (Fellsmere Road) and that part of Tract 1647 lying North of Fellsmere Farms Drainage District Canal No. 18, FELLSMERE FARMS COMPANY SUBDIVISION of unsurveyed Township 31 South, Range 37 East, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for St. Lucie County, Florida recorded in Plat Book 2, page 1 and 2, said lands situate, lying and being in Indian River County, Florida.
LESS AND EXCEPT the East 100 feet of the above-described lands. Also less the West 383.48 feet of both Tracts 1646 and 1647.

EXHIBIT "D"
TO
RESOLUTION NO. 2024-16
MORTGAGEE'S JOINDER AND CONSENT

MORTGAGEE'S JOINDER AND CONSENT

James W. Lilly and Rena L. Lilly, husband and wife, whose address is 537 Albatross Terrace, Sebastian, FL 32958, hereinafter collectively referred to as "Mortgagee" is the owner and holder of a Corrective Mortgage Deed recorded in Official Records Book 3269, Page 1042 recorded in the Public Records of Indian River County, Florida, encumbering the following described land:

SEE COMPOSIT EXHIBIT "A" ATTACHED HERETO

The Mortgagee does hereby consent, ratify and join in the execution of the Final Development Plan and Warranty Deed to the City for CR512 right-of-way to which this Joinder and Consent is attached or a copy of which is attached for the purposes herein expressed and agrees that its Corrective Mortgage Deed shall be subordinated, in all respects, to the Final Development Plan and Warranty Deed.

IN WITNESS WHEREOF, the Mortgage has caused this Joinder and Consent to be signed this ____ day of _____, 2023.

Signed, sealed and delivered
in the presence of:

Print Name: _____

James W. Lilly

Print Name: _____

Rena L. Lilly

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 James W. Lilly and Rena L. Lilly, who are ☐ personally known to me or ☐ has produced an _____ as identification.

"SEAL"

Notary Public, State of _____

**City of Fellsmere City Council
Agenda Request Form**

Meeting Date: February 1, 2024

Agenda Item No. 13(n)

- | | |
|--|--|
| <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 checked="" type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM | <input type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> Other: | |

SUBJECT: Code of Ordinance Amendments.

RECOMMENDED MOTION/ACTION: Conduct first reading on following Code of Ordinance amendments: 2024-08, Section 2-92 Budget; 2024-09, Chapter 2 Code Enforcement; and 2024-10, Section 2-237 & 238 Purchasing and set first public hearing for February 15, 2024.

Approved by City Manager  **Date:** 1-24-24

Originating Department:	Costs: \$ Funding Source: Acct. #	Attachments: Ord. 2024-08 Ord. 2024-09 Ord. 2024-10
Department Review: <input checked="" type="checkbox"/> City Attorney _____ <input checked="" type="checkbox"/> Comm. Dev. _____	<input checked="" 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:

A number of workshops and public meetings with the Planning Commission have been conducted over the past few years addressing various code issues. New issues also evolve as the code is implemented over time. In February 2019, staff obtain direction from City Council to process the many pending code changes that have been directed by Council over that past few years. Given the extent of the changes and Council's desire to manage work load, staff has broken the changes into multiple rounds. The order and contents of subsequent rounds may be adjusted as needed to address pressing matters. Minor new items may also arise that may make sense to add to a particular round as needed.

Proposed Code Changes

1. Chapter 2-92, CofO - Budget Process – memorialize process
2. Chapter 2-237 CofO - Bidding Procedures – update to match statute
3. Chapter 2 CofO – Code Enforcement clean-up

ORDINANCE No. 2024-08

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA BY ADDING TO CHAPTER 2 ADMINISTRATION, ARTICLE III OFFICERS AND EMPLOYEES SECTION 2-92 BUDGET; PROVIDING FOR RATIFICATION; AMENDMENT; CONFLICTS; SEVERABILITY; CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Fellsmere, Florida is a duly constituted municipality having such powers and authority conferred upon it by the Florida Constitution and Chapter 166 Florida Statutes; and

WHEREAS, the City Council held a duly advertised public hearing and has determined that the amendments to the Code of Ordinances of the City of Fellsmere, Florida are in the best interest of the City and that the public health, safety, environmental and general welfare of the citizens of the City will be furthered by the amendments to the Code of Ordinances.

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. AMENDMENT. That the Code of Ordinances of the City of Fellsmere, Florida is hereby amended by adding a new Section 2-92 to read as set forth in Exhibit “A” attached hereto and by this reference made a part hereof (~~strike-through~~ indicates deleted text, and underline represents added text, omitted sections from the chapter are unchanged by this Ordinance or are reserved).

SECTION 3. CONFLICTS. All previous ordinances or parts of ordinances, resolutions, or motions of the City which conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. 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 5. CODIFICATION. The provisions of this Ordinance may be incorporated into the Code of Ordinances of the City of Fellsmere, Florida and the word “ordinance” may be changed to “section”, “article” or other appropriate word, and the sections of the ordinance may be re-titled, re-numbered or re-lettered, to accomplish such codification. Grammatical, typographical and other like errors may be corrected, and additions, alterations and omissions not

affecting the construction or meaning of this Ordinance and the Code or Ordinance may be freely made.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its 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 Herrera	_____
Council Member Inocensia Hernandez	_____
Council Member Gerald Renick	_____
Council Member Jessica Salgado	_____

The Mayor thereupon declared this Ordinance fully passed and adopted this _____ day of _____, 202__.

CITY OF FELLSMERE, FLORIDA

ATTEST:

Joel Tyson, Mayor

Maria Suarez-Sanchez, City Clerk

I HEREBY CERTIFY that Notice of the public hearing 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 _____, 202__, and the first reading was held on the _____ day of _____, 202__, and the public hearing and second and final reading was held on the _____ day of _____, 202__.

Maria Suarez-Sanchez, City Clerk

EXHIBIT "A"
TO
ORDINANCE NO. 2024-08

Section 2-92. – Budget.

1. The City of Fellsmere shall establish a fiscal year beginning October 1 of each year and ending September 30 of the following year.
2. The City of Fellsmere shall adopt a tentative budget and millage rate each fiscal year as set forth in 200.065, FS. The tentative budget and millage rate shall be adopted by ordinance by the City Council after a single public hearing following a reading of the ordinance.
3. The City of Fellsmere shall adopt a final budget and final millage rate each fiscal year as set forth in 200.065, FS. The final budget and final millage rate shall be adopted by ordinance by the City Council after a single public hearing following a reading of the ordinance.
4. The amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total appropriations for expenditures and reserves. At a minimum, the final adopted budget must show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit which are at least at the level of detail required for the annual financial report under Florida Statute s. 218.32(1). The final adopted budget must regulate expenditures of the city, and an officer of a municipal government may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget.
5. A tentative budget shall be posted on the city's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least 45 days. The final adopted budget shall be posted on the city's official website within 30 days after adoption and must remain on the website for at least 2 years.
6. By October 15th of each fiscal year, the city shall electronically submit the following information regarding the final budget and the city's economic status to the Office of Economic and Demographic Research in the format specified by the office:
 - a. Government spending per resident, including, at a minimum, the spending per resident for the previous 5 fiscal years.
 - b. Government debt per resident, including, at a minimum, the debt per resident for the previous 5 fiscal years.
 - c. Average municipal employee salary.
 - d. Median income within the municipality.
 - e. Number of special taxing districts wholly or partially within the municipality.
 - f. Percent of budget spent on salaries and benefits for municipal employees.
7. The city, at any time within a fiscal year or within 60 days following the end of the fiscal year, may amend a budget for that year as follows:
 - a. Appropriations for expenditures within a fund may be decreased or increased by Resolution if the total appropriations of the fund is not changed.

Exhibit 'A' to Ordinance 2024-08

- b. The governing body may establish procedures by which the designated budget officer may authorize budget amendments if the total appropriations of the fund is not changed.
- c. If a budget amendment is required for a purpose not specifically authorized in paragraph (a) or paragraph (b), the budget amendment must be adopted in the same manner as the original budget.

(6) If the city amends the budget pursuant to paragraph (6)(c), the adopted amendment must be posted on the official website of the city within 5 days after adoption and must remain on the website for at least 2 years.

ORDINANCE NO. 2024 - 09

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING CHAPTER 2 ADMINISTRATION, ARTICLE V BOARDS, COMMISSIONS AND DEPARTMENTS OF THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA BY AMENDING SECTION 2-167 TERMS DEFINED AND CONSTRUED, SECTION 2-168 CODE ENFORCEMENT SPECIAL MASTER, SECTION 2-169 CODE ENFORCEMENT CLERK AND OTHER EMPLOYEES, SECTION 2-170 ACTIONS BY THE CITY ATTORNEY, SECTION 2-171 ENFORCEMENT PROCEDURE, SECTION 2-172 RIGHTS OF ALLEGED VIOLATORS; PAYMENT OF PENALTY; RIGHT OF HEARING; FAILURE TO PAY AND CORRECT, SECTION 2-173 HEARINGS AND PROCEDURES, SECTION 2-174 PENALTIES, SECTION 2-176 LIENS, AND SECTION 2-179 SCHEDULE OF CIVIL PENALTIES AND COSTS; PROVIDING FOR RATIFICATION, AMENDMENTS, SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Part I of Chapter 163, Florida Statutes, entitled “Local Government Code Enforcement Boards Act,” authorizes a municipality to adopt an administrative code enforcement process to enforce its local codes; and

WHEREAS, consistent with the authority conferred upon it by Chapter 163, Florida Statutes, the City has adopted and maintained an administrative code enforcement process to enforce its Code of Ordinances and Land Development Regulations; and

WHEREAS, the City Council held a duly advertised public hearing and has determined that amendments to the code enforcement process are in the best interests of the City and that the public health, safety, environmental and general welfare of the citizens of the City will be furthered by the such amendments to the Code of Ordinances.

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 legislation findings of the City Council.

SECTION 2. AMENDMENTS. That the following sections in Chapter 2 Administration of the Code of Ordinances are hereby amended to read as set forth in Exhibit “A” attached hereto and by this reference made a party hereof: Section 2-167 Terms Defined and Construed; Section 2-168 Code Enforcement Special Master, Section 2-169 Code Enforcement Clerk and Other Employees; Section 2-170 Actions by the City Attorney; Section 2-171 Enforcement Procedure; Section 2-172 Rights of Alleged Violators; Payment of Penalty; Right of Hearing; Failure to Pay and Correct; Section 2-173 Hearings and Procedures; Section 2-174 Penalties; Section 2-176 Liens; and Section 2-179 Schedule of Civil Penalties and Costs.

SECTION 3. 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 4. CONFLICTS. All previous ordinances or parts of ordinances, resolutions, or motions of the City which conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 5. CODIFICATION. The provisions of this Ordinance may be incorporated into the Code of Ordinances of the City of Fellsmere, Florida and the word “ordinance” may be changed to “section”, “article” or other appropriate word, and the sections of the Ordinance may be re-titled, re-numbered, re-lettered, to accomplish such codification.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its 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 Herrera	_____
Council Member Inocensia Hernandez	_____
Council Member Gerald Renick	_____
Council Member Jessica Salgado	_____

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

CITY OF FELLSMERE, FLORIDA

ATTEST:

Joel Tyson, Mayor

Maria F. Suarez-Sanchez, City Clerk

I HEREBY CERTIFY that Notice of the public hearing 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 the second and final reading and public hearing was held on the _____ day of _____, 2024.

Maria F. Suarez-Sanchez, City Clerk

**EXHIBIT “A”
TO
ORDINANCE NO. 2024-09**

EXHIBIT "A"
TO ORDINANCE NO. ~~2023-30~~2024-09

Sec. 2-167. Terms defined and construed.

Unless context clearly indicates otherwise, the following words, terms and phrases, when used in this division, shall have the meanings set forth below.

- (a) *Civil violation notice* is the official written notice by a code enforcement officer to an alleged violator and/or property owner of a violation of one or more code sections ~~set forth in section 2-179(1) issued of the City's Code of Ordinances and/or Land Development Code by a code enforcement officer~~. The civil violation notice shall include, but not be limited to, the following:
- (1) The date of issuance.
 - (2) The name of the code enforcement officer issuing the notice.
 - (3) The name and address of the alleged violator and the owner of the real property on which the alleged violation occurred, if such person or entity is not the alleged violator.
 - (4) The section number of the code section allegedly violated.
 - (5) A brief description of the nature of the violation, including location, ~~and~~ date, ~~and time~~ of discovery of the violation.
 - (6) The amount of the proposed civil penalty or penalties.
 - (7) Instructions and a due date for paying the civil penalty or appearing at an administrative hearing before a special master to contest the alleged violation and civil penalty.
 - (8) The period of time, within which the violation must be corrected, if applicable, specifying the date for correction. Time shall be specified in calendar days. No extra time shall be allowed for weekends or holidays.
 - (9) Notice that for each day the of violation continues ~~ed violation~~ after the date for correction, ~~has run may be a daily fine may be imposed a continuing violation subject to additional penalty~~ without additional notice of violation.
 - (10) Notice that the alleged violator and/or owner is entitled to an administrative hearing and providing, giving the date, time and address thereof.
 - (11) Notice that the alleged violator and/or owner may be liable for the reasonable costs of the administrative hearing if ~~found guilty~~ the special master concludes that there have been one or more violations of the City's Code of Ordinances and/or Land Development Code.
 - (12) Notice that the alleged violator and/or owner must advise the City in writing when the violation set forth in the civil violation notice has been corrected. Failure to notify the City of the correction will result in the violation penalties continuing to accrue daily.
 - (13) Notice that the City does not perform inspections to determine the status of corrections required by the civil violation notice, unless requested in writing.
- ~~(b)~~ (b) *Code enforcement officer* means those duly authorized and appointed employees or agents of the City whose duty it is to enforce City codes and to present code violations to the special master. As used herein "code enforcement officer" and "code inspector" shall have the same meaning.

(ce) *Continuing violations* are those violations, which remain uncorrected beyond the date for correction. For each day of continued violation after the date for correction, there shall be an additional daily penalty to be set pursuant to ~~section~~ Section 2-179.

(dd) *Date for correction* means the date specified in the civil violation notice, ~~citation~~ or order of the special master, whichever is applicable, upon which correction of the violation shall be fully and completely effected and accomplished.

~~(e) — Notice or written notice, unless otherwise indicated, means a written notification of a civil violation notice, which is given to the alleged violator as follows:~~

~~(1) — Except as otherwise specifically provided herein, all notices to the alleged violator shall be given:~~

~~a. — By certified mail, return receipt requested, which shall be effective upon receipt;~~

~~1. — Provided, however, that if such notice is sent to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the city by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subsection (e)(2)b.1. and 2. of this section and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing; or~~

~~b. — By hand delivery:~~

~~1. — By the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the local governing body and such notice shall be effective upon receipt; or~~

~~2. — By leaving the notice at the alleged violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; such notice shall be effective when so left; or~~

~~3. — In the case of commercial premises, by leaving the notice with the manager or other person in charge, notice to be effective when so left.~~

~~(2) — In addition to providing notice as set forth in subsection (e)(1) of this section, notice may also be served by publication or posting, as follows:~~

~~a. — Publication.~~

~~1. — Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Indian River County, which meets requirements prescribed under F.S. ch. 50, for legal and official advertisements.~~

~~2. — Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.~~

~~3. — Notice by publication shall be effective the last day of publication.~~

~~b. — Posting.~~

~~1. — In lieu of publication as described in subsection (e)(2)a. of this section, notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be city hall.~~

~~2. — Proof of posting shall be by affidavit of the person posting the notice, which shall include a copy of the notice posted and the date and places of its posting.~~

~~3. — Notice by posting shall be effective on the eleventh day following the initial posting.~~

~~c. — Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (e)(1) of this section.~~

~~(3) — Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (e)(1) of this section, together with proof of publication or posting as provided in subsection (e)(2) of this section, shall be~~

sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice. When more than one method of giving notice is used and is required for notice, the effective date of notice shall be governed by the longest applicable notice period (e.g., if certified mail and posting are used and the certified mail is returned "unclaimed" or "refused," the time period for posting shall determine the effective date for notice).

(4) — For purposes of this division, any deadline or effective date falling upon a Saturday, Sunday or legal holiday recognized by the city will be extended to the following business day, except as provided in subsection (a)(8) of this section.

(f) — Citation or written citation, unless otherwise indicated, means a written citation, which is given to the alleged violator as follows:

(1) — Except as otherwise specifically provided herein, all notices to the alleged violator of a citation shall be given:

a. — By hand delivery:

1. — By the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the local governing body and such citation shall be effective upon receipt; or

2. — By leaving the citation at the alleged violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; such citation shall be effective when so left; or

3. — In the case of commercial premises, by leaving the citation with the manager or other person in charge, citation to be effective when so left.

b. — Posting.

1. — In lieu of hand delivery as described in subsection (f)(1)a. of this section, citation may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the citation, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be city hall.

2. — Proof of posting shall be by affidavit of the person posting the citation, which shall include a copy of the citation posted and the date and places of its posting.

3. — Citation by posting shall be effective on the eleventh day following the initial posting.

c. — Citation by posting may run concurrently with, or may follow, an attempt or attempts to provide citation by hand delivery as required under subsection (g)(1) of this section.

(3) — Evidence that hand delivery as provided in subsection (f)(1)a of this section or proof of posting as provided in subsection (f)(1)b of this section, shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

(4) — For purposes of this division, any deadline or effective date falling upon a Saturday, Sunday or legal holiday recognized by the city will be extended to the following business day, except as provided in subsection (a)(8) of this section.

(egf) Penalties for violations of code sections enforced by this division shall be fines to be set pursuant to section 2-179(1), except as otherwise provided; provided further that a special master may increase those penalties subject to the limitations in F.S. § 162.09, as amended.

- (1) Continuing violation penalties shall accrue daily from the date for correction until correction is actually made as determined by a code enforcement officer after receiving notice in writing of such correction by the violator and/or owner in accordance with subsection (a)(12).
- (2) If correction is not made by the date for correction set by the special master, continuing violation penalties shall begin from that date.

- (3) A special master may not impose continuing violation penalties for uncorrectable violations.
 - (4) If the violator and/or owner does not appeal to the circuit court, civil penalties assessed pursuant to this division are due and payable to the City on the day following the last day for filing such an appeal. If the alleged violator appeals the special master's decision to the circuit court, penalties assessed pursuant to this division shall not be payable until the appeal is decided. If the alleged violator loses the appeal, the civil penalties shall be payable the day following the rendition of the court decision.
- (f) ~~h~~ *Reasonable ~~Probable~~ cause* means a reasonable-rational belief that a code provision has been violated and that the alleged violator committed the violation.
- (g) ~~h~~ *Repeat violation* means a recurring violation of a code section by an alleged violator and/or owner who was previously guilty of the same violation or who has admitted violating the same provision within 5 years prior to the violation in question, notwithstanding that the prior violation occurred at a different location(s). In the case of correctable violations, a repeat violation may occur only after correction of the previous violation.
- (1) For the first repeat violation, the civil penalty may be double the penalty prescribed in subsection Section 2-179(1) for the original violation or if no penalty is prescribed in subsection Section 2-179(1), the penalty shall be double the penalty levied for the preceding violation.
 - (2) The civil penalty for each subsequent repeat violation may be double the penalty due for the first day of the immediately preceding violation.
 - (3) The maximum penalty payable for the first day of any repeat violation shall not exceed five hundred dollars (\$500).
 - (4) A repeat violation which remains uncorrected beyond the date for correction shall be treated as a continuing violation, and the additional penalty for each day of continuing violation shall be equal to the doubled amount due for the first day of the repeat violation.
- (h) ~~h~~ *Uncorrectable violation* means an "irreversible or irremediable violation," which is one that cannot be remedied because it is a single prohibited act rather than an ongoing condition or circumstance. Each reoccurrence of an uncorrectable violation is a separate violation and shall subject the alleged violator to an additional penalty. If an alleged violator, having been found guilty of an uncorrectable violation, causes the same uncorrectable violation to reoccur, each reoccurrence shall constitute a "repeat violation."
- (i) ~~h~~ *Violator* means the person(s) or entity(ies) legally responsible for the code violation, which ~~in appropriate circumstances~~ may ~~either~~ be the perpetrator of the violation or the owner of the real property upon which the violation occurred or both the perpetrator and the owner.
- (j) ~~h~~ *Violation* means a violation of one or more ~~code~~ sections of the City's Code of Ordinances and/or Land Development Code. ~~set forth in subsection 2-179(1).~~

Sec. 2-168. - Code enforcement special master.

The position of code enforcement special master (hereinafter "special master") is hereby created and established to enforce city code sections as provided in subsection Section 2-179(1).

- (1) *Appointment.* The city council may appoint as many special masters as are deemed necessary.
- (2) *Term of office.* A special master shall be appointed for a term of one year, but may be removed with or without cause at any time by the council upon the recommendation of the mayor. There is no limit on the number of terms a special master may serve.
- (3) *Qualifications.* The special master shall be an attorney duly licensed to practice law in Florida who has a reputation for integrity and responsibility and who has professional ability and interest in serving as a special master.
- (4) *Powers and duties of special master.* A special master shall have the following powers and duties:
 - a. To adopt procedures for the conduct of hearings, subject to the approval of the city attorney.

- b. To conduct hearings in accordance with such procedures and the requirements of this division.
- c. To issue subpoenas to alleged violators and witnesses requiring them to appear or produce evidence at hearings before the special master. Subpoenas may be served by the City's Police Department and/or other law enforcement agencies with jurisdiction to serve subpoenas.
- d. To take testimony under oath.
- e. To issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.
- f. To assess and order the payment of costs and civil penalties under Section 2-179 and, in addition thereto, recover all costs of investigation, all charges, costs, attorneys' fees and other fees, interest and other penalties which are payable under any code section, ordinance, resolution, rule or regulation which is then being enforced hereunder.

(5) *Conflict of interest.* A special master shall not hear any matter in which he or she has a conflict of interest, but, in such event, shall recuse him or herself and request the mayor to designate another special master.

(6) *Compensation.* A special master shall not be a city employee, but shall be compensated and reimbursed for such travel expenses and other per diem expenses as determined by administrative order at the same rate as City employees.

Sec. 2-169. - Code enforcement clerk and other employees.

A. **Code Enforcement Clerk.** The City Manager City Attorney shall appoint a city employee to be the code enforcement clerk who shall perform such functions as shall be assigned by the community development director. For purposes of administering this ordinance, a special master may call upon the City Manager Attorney to furnish such other city employees as may be necessary to support and assist the special master.

B. Code Enforcement Officer.

- (1) The City Manager may designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the City. Employees or agents who may be designated as code enforcement officers may include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or fire safety inspectors. Designation as a code enforcement officer does not provide the code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of ss. 943.085-943.255.
- (2) Code enforcement officer(s) shall cause all public and private property, lots and space in the City to be inspected to determine the condition thereof, and if, upon inspection, it is determined that a violation of Land Development Code or Code of Ordinances exists, a code enforcement officer shall initiate proceedings in accordance with the provisions set forth in chapter 2, article V, division 2 of this Code, or if necessary, refer such matter to the appropriate enforcement body.
- (3) Code enforcement officers may enter upon any private property to determine the condition thereof as required by ~~part~~ subsection B.(2) above. Prior to entering private property, the code enforcement officer shall attempt to make contact with the owner and/or resident of the property to gain permission to enter. If permission is not granted, the code enforcement officer shall not enter upon private property without first having obtained an order granting access from a court of competent jurisdiction.
- (4) The code enforcement officer(s) is hereby authorized to promulgate and adopt such reasonable rules and regulations as may be needed to effectuate and enforce the intent of this ~~article~~ division. Such rules and regulations shall be subject to approval by the city council and ~~code enforcement special master~~, and ~~three~~ copies thereof shall be kept on file in the office of the city clerk, and ~~three~~ copies shall be kept in the code enforcement office, all of which are hereby made a part of this article as fully as if completely incorporated herein.

Sec. 2-170. - Actions by the city attorney.

The city attorney shall represent the city and the code enforcement officer ~~before the special master and~~ before the courts, when requested to do so by the ~~mayor~~City Manager. ~~When requested, t~~The city attorney or designee, who may or may not be an attorney, shall ~~represent the City Council and~~ present the city's case in all ~~formal~~ hearings ~~before the Special Master~~. The city attorney shall have prosecutorial discretion similar to the discretion exercised by the state attorney in criminal cases, including but not limited to the right to negotiate a plea with an alleged violator and present that plea to the special master for approval, to recommend the disposition of a case to the special master, and to decline to prosecute a case. ~~The city attorney may compromise penalties less than of \$1,000 or less and arrange for their payment and terms and conditions which the city attorney deems appropriate.~~ With the approval of the ~~mayor~~City Council, ~~the city attorney may compromise~~ penalties exceeding \$1,000\$500.00 ~~may be abated or compromised only after code compliance has been attained.~~ All costs of investigation and costs for ~~prosecuting the code enforcement action including, but not limited to, the time of the Building Official, City Engineer, City Attorney, Code Enforcement Officer and other support staff at their hourly rate, plus benefits if applicable, and all fees and costs incurred as a result of any court proceedings,- including all appellate levels of court, attorneys' fees, administrative fees and costs, administrative hearing costs, expert witnesses fees, filing fees, recording fees, newspaper publication fees, postage and service costs shall not be abated or compromised.~~

(Ord. No. 06-14, § II, 2-16-06)

Sec. 2-171. - Enforcement procedure.

(a) Informal courtesy warning. Before issuing a civil violation notice, the code enforcement officer may give a courtesy warning, allowing an alleged violator not less than ten nor more than fifteen days from the date of the warning within which to correct a violation; provided, however, that receipt of a warning shall not be a matter of right. Such a warning shall be in writing and may be given by hand delivery, by first class mail or by posting upon the alleged violator and/or property owner's property and shall be effective upon the date of delivery, mailing or posting, as the case may be. Since it is a courtesy, a warning shall not be a precondition to issuance of a civil violation notice and failure to warn will not vitiate such a civil violation notice. Failure to describe all infractions in a warning shall not prevent a code enforcement officer from citing infractions that were not included in a warning in a subsequent civil violation notice. A courtesy warning sent by certified mail that is returned as "refused" or "unclaimed" shall constitute evidence required by Section 2-171(c)(1) to allow subsequent delivery of a civil violation notice to be published or posted as authorized by 2-171(c)(2).

(b) Issuance of civil violation notice. Except as provided in subsections (d) through (h) of this section, if the code enforcement officer finds reasonable cause that a code violation exists, the code enforcement officer shall notify the alleged violator and/or property owner by issuing a civil violation notice to the alleged violator and/or property owner and providing a reasonable time within which to correct the violation. Determination of a "reasonable time" for purposes of this section shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage to the public; and such other factors as the code enforcement officer or special master, as the case may be, reasonably deems relevant. It is not necessary to provide an alleged violator and/or property owner with reasonable time to correct the violation if the code enforcement officer reasonably believes that:

- i. The violation is uncorrectable;
- ii. The violation is a repeat violation; or
- iii. The violation presents a serious threat to the public health, safety, or welfare.~~(a)~~

(c) Service of Civil Violation Notice and Hearings

(1) Written notification of a civil violation and/or notice of hearing given to the alleged violator and/or owner of the real property on which an alleged violation exists shall be as follows:

- a. By certified mail, return receipt requested, which shall be effective upon receipt. Provided, however, that if such notice is sent to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the City by such violator and/or owner and is returned as unclaimed or refused, or otherwise undeliverable through no fault of the City, notice may be provided by posting as described in subsection (c)(2)b. of this section and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing; or
- b. By hand delivery:
 - i. By the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the local governing body and such notice shall be effective upon receipt; or
 - ii. By leaving the notice at the alleged violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; such notice shall be effective when so left; or
 - iii. In the case of commercial premises, by leaving the notice with the manager or other person in charge, notice to be effective when so left.

(2) In addition to providing notice as set forth in subsection (c)(1) of this section, notice may also be served by publication or posting, as follows:

- a. By publication:
 - i. Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Indian River County, which meets requirements prescribed under F.S. ch. 50, for legal and official advertisements.
 - ii. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.
 - iii. Notice by publication shall be effective the last day of publication.
- b. In lieu of publication as described in subsection (c)(2)a. of this section, notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be City Hall.
 - i. Proof of posting shall be by affidavit of the person posting the notice, which shall include a copy of the notice posted and the date and places of its posting.
 - ii. Notice by posting shall be effective on the eleventh day following the initial posting.
- c. Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (c)(1) of this section.

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (c)(1) of this section, together with proof of publication or posting as provided in subsection (c)(2) of this section, shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator and/or property owner actually received such notice. When more than one method of giving notice is used and is required for notice, the effective date of notice shall be governed by the longest applicable notice period (e.g., if certified mail and

posting are used and the certified mail is returned "unclaimed" or "refused," the time period for posting shall determine the effective date for notice).

For purposes of this subsection, any deadline or effective date falling upon a Saturday, Sunday or legal holiday recognized by the City will be extended to the following business day, except as provided in 2-167(a)(8). Duty of code enforcement officer. It is the duty of the code enforcement officer to assure code compliance and to initiate enforcement proceedings for code violations. A special master shall have no power to initiate enforcement proceedings.

(4)

(a) (b) Issuance of civil violation notice or citation. Except as provided in subsections (c), (d) and (e) of this section, if the code enforcement officer finds probable cause of a code violation, the code enforcement officer shall notify the alleged violator by issuing a civil violation notice, as determined by 2-174(1), or citation, as determined by 2-174(2) giving the alleged violator a reasonable time within which to correct the violation. An alleged violator shall be given written citation or notice of the violation as provided in subsection 2-167(e) or (f), which shall include notice of hearing. Determination of a reasonable time shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage to the public; and such other factors as the code enforcement officer or special master, as the case may be, reasonably deems relevant. A period of time for correction need not be specified if the violation is deemed an uncorrectable violation or is a repeat violation. P

(b)(1) Informal courtesy warning. Before issuing a civil violation notice, the code enforcement officer shall give a courtesy warning, allowing an alleged violator not less than ten nor more than 15 days from the date of the warning within which to correct a violation; provided, however, that receipt of a warning shall not be a matter of right. Such a warning shall be written and may be given by hand delivery, by first class mail or by posting upon the alleged violator's property and shall be effective upon the date of delivery, mailing or posting, as the case may be; provided that the notice requirements of subsection 2-167(e) shall not apply. Since it is a courtesy, a warning shall not be a precondition to issuance of a civil violation notice and failure to warn will not vitiate such a civil violation notice. Failure to describe all infractions in a warning shall not prevent a code enforcement officer from citing infractions that were not included in a warning in a subsequent civil violation notice. A warning will not be required for uncorrectable violations, repeat violations, or violations that are a threat to public health, safety and welfare, or violations set forth in 2-174(2). A courtesy warning that has been returned after an attempt for delivery by mailing has failed shall constitute evidence required by Section 2-167(e)(1)a to allow subsequent delivery of a civil violation notice to be posted as allowed by 2-167(d)(2)(b).

(c) Procedure for repeat violation. If the code enforcement officer finds ~~probable~~ reasonable cause of a repeat violation, the code enforcement officer shall notify the alleged violator by issuing a civil violation notice in the same manner as subsection (b) except that the code enforcement officer but shall not be required to give a period of time to correct the violation before a hearing may be scheduled nor shall the code enforcement officer give an informal courtesy warning in accordance with subsection (a). Upon giving such notice, the code enforcement officer shall also notify the special master and request a hearing. The special master, through clerical staff, shall schedule a hearing and provide notice thereof as provided in subsection 2-167(e). The case may be presented to the special master even if the repeat violation has been corrected prior to the hearing, and the notice shall so state.

(d)

(d) Procedure for threat to public health, safety and welfare. If the code enforcement officer has probable cause to believe a violation presents a serious threat to public health, safety and welfare or if the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the alleged violator and may immediately notify the special master and request a hearing. The special master, through clerical staff, shall schedule a hearing and provide notice thereof pursuant to subsection 2-167(e).

(e) Procedure for threat to public health, safety and welfare. If the code enforcement officer has reasonable cause to believe a violation presents a serious threat to public health, safety and welfare or if the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the alleged violator and may immediately notify the special master and request a hearing. The special master, through clerical staff, shall schedule a hearing and provide notice thereof in accordance with subsection (c).

~~(e)~~ (e) Procedure for peddlers or solicitors. If the code enforcement officer or his/her designee has probable reasonable cause to believe of a violation of Chapter 62. Peddlers and Solicitors, the code enforcement officer shall issue an immediate courtesy warning citation to the alleged violator requiring the alleged violator to immediately cease illegal activities and, if applicable, correct the violation. Such a warning shall be written and may be given by hand delivery or by posting upon the alleged violator's real or tangible personal property and shall be effective upon the date of delivery or posting, as the case may be; provided that the notice requirements of subsection subsection (c) 2-167(e) shall not apply. Since it is a courtesy, a warning shall not be a precondition to issuance of a civil violation notice and failure to warn will not vitiate such a civil violation notice. Any subsequent conduct in violation of the noted regulations shall subject the violator to an immediate civil violation notice citation imposing a fine as set forth in Section 2-179. Continued violation of the noted violations shall subject the violator to an immediate continuing civil violation as set forth in Section 2-179.

(f)

~~(f)~~ (f) Procedure for violation of Section 18-34 Licensed Contractors - Required. When enforcing the provisions of Section 18-34 of this Code, the code enforcement officer shall follow the procedures as set forth in Section 18-34 of this Code.

(g)

~~(g)~~ (g) Procedure for violation of the Adult Entertainment Code - Required. When enforcing the provisions of Chapter 10, Article IV of this the Adult Entertainment Code, the code enforcement officer shall follow the procedures as set forth in Sections 2610-105 and 10-106 of the Adult Entertainment this Code.

(h)

Sec. 2-172. - Rights of alleged violators; payment of penalty; right to hearing; failure to pay and correct.

(a) Pay penalty and correct violation or appear at hearing. An alleged violator who has been served with a civil violation notice shall either:

(1) Pay the civil penalty in the manner indicated on the notice and correct the violation within the period of time specified on the notice (if applicable); or

(2) Appear at a hearing before the special master to determine the alleged violator's responsibility for the violation.

(b) Failure to appear; admission; waiver; penalty. The failure of an alleged violator to appear at the hearing as required by subsection (a)(2) of this section shall have the following consequences. The failure of an alleged violator to appear at the hearing is an admission of fault by such violator and a waiver of the violator's right to an administrative hearing before the special master. On the basis of such admission and waiver, the special master may order corrective measures, penalties, charges, fees, interest, and costs which are applicable under any code section or ordinance, which is then being enforced hereunder.

(c) Hearing on Sections 2-171(b), (d), (e), and (f) violations. The special master shall conduct a hearing on a subsection 2-171(d) repeat violation, even if corrected, and on Sections 2-171(b), (e), and (f) violations to assess penalties, determine costs and to order corrective measures, as appropriate. The alleged repeat violator or Section 2-171(d) violator may choose to waive the right to this hearing and pay costs and penalties as assessed by the special master.

Sec. 2-173. Hearings and procedures.

Fundamental due process shall be observed and shall govern all hearings. At the time and place set for the hearing, the special master shall hear and consider all testimony offered and shall examine and consider all other evidence presented. After the hearing concludes, the special master shall make findings of fact and conclusions of law, order steps necessary to bring a violation into compliance within the time period set in the order, and assess costs and penalties as appropriate. If the special master believes a violation presents a serious threat to the public health, safety and welfare, the special master may also refer the matter to the mayor to request the city attorney to seek appropriate injunctive relief from the circuit court.

- (1) Scheduling. Having allowed sufficient time to give notice as required herein, an administrative hearing on an alleged violation shall be set on the next regularly scheduled hearing date or as soon thereafter as possible or as mandated in the specific code section being enforced pursuant to this division. Upon being advised by the code enforcement officer of violations under pursuant to subsection 2-171(eb), or (d), (e), or (f), the special master shall set a hearing to consider such violations.
- (2) Notice of hearing. The alleged violator shall be notified of the hearing in the civil violation citation or notice. Notice of hearing for violations under Secsubsections 2-171(eb), and (d) (e), or (f) shall be given as provided in SubSection 2-167 2-171(ec), and (f). Notice of hearing, when not included in a civil violation notice or citation, shall include but not be limited to the following:
 - a. Name of the code enforcement officer who issued the notice of civil violation.
 - b. Factual description of alleged violation.
 - c. Date of alleged violation.
 - d. Section of the code allegedly violated.
 - e. Place, date and time of the hearing.
 - f. Right of an alleged violator to be represented by a lawyer.
 - g. Right of an alleged violator to present witnesses and evidence.
 - h. Notice that failure of an alleged violator to attend hearing may result in civil penalty being assessed against him, her or it.
 - i. Notice that requests for continuances will not be considered if not received by the special master at least five calendar days prior to the date set for hearing.
- (3) Monthly hearings. A special master shall call hearings on a monthly basis or upon the request of the code enforcement officer or mayorCity Manager. No hearing shall be set sooner than 10 calendar days from the first date of giving notice under subsection 2-167(f) or 20 calendar days from the first date of giving notice under subsection 2-167(e) of the civil violation notice or notice of hearing, unless the special master determines on his/her own motion that the circumstances of the violation require an earlier hearing.
- (4) Continuance. A hearing date shall not be postponed or continued unless a request for continuance, showing good cause, is received in writing by the special master at least five calendar days prior to the scheduled hearing date.
- (5) Open to public, etc. All hearings of the special master shall be open to the public. All testimony shall be under oath. If proper notice has been given, a hearing may proceed in the absence of the alleged violator. Any person whose interests may be affected by the matter before the special master shall be given a reasonable opportunity to be heard.
- (6) Recording. All testimony before the special master shall be recorded.
- (7) Clerical support. The city shall provide clerical and administrative support personnel as reasonably required for performance of the special master's duties.

- (8) Case presentation. Each case before a special master shall be presented by the code enforcement officer responsible for the case~~city attorney~~ or designee.
- (9) Evidence. The hearing need not be conducted in accordance with formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the special master finds it competent and reliable, regardless of the existence of any common law or statutory rules to the contrary.
- (10) Witnesses. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut adverse evidence.
- (11) Findings and conclusions. The special master shall make findings of fact based on evidence presented before him or her and conclusions of law.

The fact-finding determination of the special master shall be limited to whether the alleged violation did occur and, if so, whether the person(s) or entity(ies) named in the civil violation notice ~~or citation~~ or the notice under ~~subsection 2-171~~Sections 2-171(e) or (d) through (h) can be legally held responsible for the alleged violation.

The special master shall affirm, modify or reverse the code enforcement officer's determination regarding the alleged violator's responsibility for the code violation. A finding upholding the violation shall be made by a preponderance of the evidence that the alleged violator was legally responsible for the code violation as charged. If the special master upholds the violation, he or she shall, pursuant to ~~Sections~~subsection 2-171(b), allow a reasonable time within which to correct the violation, if correctable; provided, however, that repeat violations and uncorrectable violations shall not be subject to the requirement of a reasonable time for correction.

If found guilty of the violation, the violator may, at the special master's discretion, as provided in ~~subsection 2-179~~Section 2-179(23), be held liable for reasonable administrative hearing costs.

If the special master ~~reverses the code enforcement officer's determination and finds~~concludes that the alleged violator is not responsible for the alleged violation, the alleged violator shall have no liability for civil penalties or costs, unless the special master's findings are overturned on appeal by the ~~city~~City pursuant to ~~section~~Section 2-177.

- (12) Presumed reasonableness of time for correction. The time for correction prescribed in the civil violation notice ~~or citation~~ shall be presumed to be reasonable; provided that, upon presentation of relevant evidence to the contrary, the special master may re-determine the reasonableness of the time for correction. If the special master finds such time insufficient, the penalty for a continuing violation may be re-calculated for a reasonable correction period.
- (13) Enforcement order. The special master shall reach a decision without unreasonable or unnecessary delay and in all instances within ten ~~calendar~~business days from the date of the hearing. If the decision of the special master is to affirm, the special master shall issue a written enforcement order, which shall include the following elements:
 - a. Amount of the civil penalty payable under ~~section~~Section 2-179 and, in addition thereto, all charges, costs, attorneys' fees and other fees incurred in the prosecution of the case and in addition thereto interest, and other penalties which are payable under any code section, ordinance, resolution, rule or regulation which is then being enforced hereunder. Costs shall include, but not be limited to, the time of the Building Official, City Attorney, City Engineer, Code Enforcement Officer and other support staff at their hourly rates, plus benefits if applicable, investigation of the case, administrative fees and costs, expert witness fees, filing fees, recording fees, publication fees, postage and service of process fees.
 - b. Administrative hearing costs which may include special master fees.

- c. Date by which the violation must be corrected to prevent imposition of continuing violation penalties and the daily amount of the continuing penalty that will be charged if the violation is not timely corrected (if applicable).

Every enforcement order shall include findings of fact and conclusions of law. Every enforcement order shall be signed by the special master and shall be filed in the office of the city community development director. A copy of the signed order shall be sent by certified mail, return receipt requested, to the alleged violator. Upon failure of delivery of certified mail, return receipt, the City shall post the order as set forth in ~~sub~~Section 2-16771(ec)(2)b.

An original or certified copy of such order may be recorded in the public records of the county and, if the violation concerns real property, shall constitute notice to subsequent purchasers, successors in interest, or assigns. The findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns.

(14) Repair of City Property. Whenever the Special Master enters an order for the repair or replacement of City property, the order may include the actual costs of repair or replacement plus an administrative surcharge of fifteen percent (15%) of the total costs of the repair or replacement.

(15) Referral regarding interpretation or application of code provision. A special master may upon his or her own motion refer a matter involving interpretation of a ~~city~~City code section to the ~~city~~City council-Council or board with jurisdiction over such provision. While such referral is pending, proceedings in the specific matter before the special master may be suspended.

(16) Binding interpretation. The City shall decide all intents, questions, conflicts, difficulties and disputes of whatever nature, which may arise relative to the interpretation of the Code of Ordinances and the Land Development Code. Interpretations and decisions of the City Council and duly authorized city boards concerning the ~~code~~ Code of Ordinances and the Land Development Code provisions within their respective jurisdictions shall be binding upon the special master.

(17) Acknowledgment of correction. If an order is recorded in the public records pursuant to F.S. § 162.07(4) and the order is complied with by the date specified in the order, the special master shall issue an order acknowledging compliance, which shall be recorded in the public records. A hearing is not required to issue such acknowledgment.

(Ord. No. 06-14, § II, 2-16-06; Ord. No. 2012-03, § 2(Exh. A), 6-7-2012)

Sec. 2-174. Penalties.

(a) In addition to the penalties provisions set forth elsewhere in this division, the following shall apply:

- (1) Upon notification by the code enforcement officer that an order of the special master has not been complied with by the date set for correction, the special master shall order the violator to pay a penalty of at least the amount specified in ~~section~~Section 2-179 for each day the violation continues past the date for correction or alternatively, the special master's initial compliance order may provide for the continuing penalty if the violation is not timely corrected; or
- (2) Upon finding that a repeat violation has been committed, the special master shall order the violator to pay a penalty of at least the amount specified in ~~subsection~~Section 2-167(hg), for each day the repeat violation continues past the date of notice of the repeat violation.
- (3) If a finding of a continuing violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of the order imposing the penalty; provided that a repeat violator shall be entitled to a hearing as provided by ~~Sect~~subsections 2-171(ad) and 2-172(c).

(b) A penalty imposed pursuant to this section shall not exceed \$250.00 per day for a first violation or \$500.00 per day for a repeat violation. In determining the amount of the penalty under this section, if any, the special master shall consider the following factors:

- (1) The gravity of the violation;
 - (2) Any actions taken by the alleged violator to correct the violation; and
 - (3) Any previous violations committed by the alleged violator.
- (c) If the special master finds that a violation is irreparable or irreversible in nature, the special master may impose a penalty not to exceed \$5,000.00 per violation.
- (d) The special master shall notify the violator by first class mail of any action taken under this section unless notice is provided to the violator as specified in [subsection Section 2-173\(13\)](#).
- (e) The penalties imposed pursuant to this Section shall continue to accrue daily until the violation(s) identified in the civil violation notice is corrected. Upon receipt of written notice that all violations have been corrected, the code enforcement officer shall inspect the property to determine compliance with the civil violation notice or the order of the special master, whichever is applicable. Confirmation by the code enforcement officer of the correction of the violation(s) shall establish the date of compliance at which time the daily penalties shall cease.

Sec. 2-176. Liens.

- (a) ~~An original or~~ certified copy of an order imposing a penalty, attorneys' fees, other fees, costs, charges and interest under this division and charges, costs, attorneys' fees and other fees, interest and other penalties which are payable under any code section or ordinance which is then being enforced under this division, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by any sheriff of this state, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A continuing penalty imposed pursuant to this division shall continue to accrue until the alleged violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city, and the city council may execute a satisfaction or release of lien entered pursuant to this section. After three (3) months from filing of any such lien, which remains unpaid, the city may authorize the city attorney to foreclose on the lien or sue to recover a money judgment for the amount of the lien plus attorneys' fees, costs, accrued interest and penalties; provided that, actions for money judgment may be pursued only on fines levied after October 1, 2000. No lien created pursuant to the provisions of this action may be foreclosed on real property, which is a homestead under Section 4, Article X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under Section 4(a), Article X of the State Constitution.
- (b) Pursuant to F.S. § 162.10 no lien created under that section shall continue for longer than 20 years after the certified copy of an order imposing a penalty has been recorded, unless within that period of time an action is commenced pursuant to subsection (a) of this section in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees that it incurs in the action. The city shall be entitled to collect all costs and charges incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(Ord. No. 06-14, § II, 2-16-06; Ord. No. 2012-03, § 2(Exh. A), 6-7-2012)

Sec. 2-179. - Schedule of civil penalties and costs.

Subsection (1) sets forth the code sections, which are to be processed as civil violation notices as may be amended from time to time, which may be enforced pursuant to the provisions of this division and the dollar amount of civil penalty for the violation of these sections. Subsection (2) sets forth the code sections, which may be processed as civil violation citations or notices as may be amended from time to time, which may be enforced pursuant to the provisions of this division and the dollar amount of civil penalty for the violation of these sections.

Descriptions of violations are informational only and shall not limit or define the nature of the violations or the subject matter of the listed code sections, except to the extent that different types of violations of the same code section may carry different civil penalties. For each code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this division, regardless of whether all activities proscribed or required within that particular section are described in the "description of violation." To determine the exact nature of any activity proscribed or required by this Code, the relevant code section must be examined.

[Land Development Code \(LDC\)](#)

[Fellsmere City Ordinance \(CO\)](#)

[Florida Building Code \(FBC\)](#)

[International Property Maintenance Code \(IPMC\)](#)

[Standard Initial Minimum Fine: \\$25](#)

[Health and Safety issue Minimum Initial Fine: \\$50 \(Denoted with *\)](#)

[Environmental Standards Minimum Fine: \\$100 \(Denoted with **\)](#)

(1) Covered code sections [for civil violation notices](#); penalties.

<u>Code/Ordinance #</u>	<u>Title</u>	<u>Minimum Initial Fine</u>	<u>Minimum Daily –Fine</u>
<u>Land Development Code</u>			
<u>3.5.A</u>	<u>Permitted uses.</u>	<u>\$25</u>	<u>\$20</u>
<u>3.6.C</u>	<u>Lot size requirements.</u>	<u>\$25</u>	<u>\$20</u>
<u>3.7</u>	<u>Purpose, Use and Maintenance of Yards.</u>	<u>\$25</u>	<u>\$20</u>
<u>3.8</u>	<u>Buildings and structures.</u>	<u>\$25</u>	<u>\$20</u>
<u>4.1</u>	<u>Accessory Buildings: Permitted uses in residential and planned development districts</u>	<u>\$25</u>	<u>\$20</u>
<u>4.3</u>	<u>General accessory use restrictions.</u>	<u>\$25</u>	<u>\$20</u>
<u>4.4</u>	<u>Use of vehicle as storage/utility building.</u>	<u>\$25</u>	<u>\$20</u>
<u>5.3.A-OO</u>	<u>Criteria for specified uses.</u>	<u>\$25</u>	<u>\$20</u>
<u>6.2.A - P</u>	<u>Prohibited use/activities. (Home Occupations)</u>	<u>\$25</u>	<u>\$20</u>
<u>6.3</u>	<u>Use limitations for home occupations.</u>	<u>\$25</u>	<u>\$20</u>
<u>7.1</u>	<u>Excavation and fill.</u>	<u>\$25</u>	<u>\$20</u>
<u>7.2</u>	<u>Off-street parking and internal circulation requirements.</u>	<u>\$25</u>	<u>\$20</u>
<u>7.4.B</u>	<u>Permit required. (Fences)</u>	<u>\$25</u>	<u>\$20</u>
<u>7.4.J</u>	<u>Swimming pool or spa fences.</u>	<u>\$50</u>	<u>\$30</u>
<u>7.6</u>	<u>Swimming pools and spas.</u>	<u>\$25</u>	<u>\$20</u>

<u>7.7</u>	<u>Driveways, parking pads, patios and decks.</u>	<u>\$25</u>	<u>\$20</u>
<u>7.8</u>	<u>Dish and other antenna</u>	<u>\$25</u>	<u>\$20</u>
<u>7.10</u>	<u>Maintenance generally.</u>	<u>\$25</u>	<u>\$20</u>
<u>7.13</u>	<u>Lighting.</u>	<u>\$25</u>	<u>\$20</u>
<u>7.14</u>	<u>Underground utilities.</u>	<u>\$25</u>	<u>\$20</u>
<u>7.18 (C) & (G)</u>	<u>Watering restrictions</u>	<u>\$50 (after 1st warning)</u>	<u>\$500 or less for 2nd Viol</u>
<u>10.5</u>	<u>Building permits. (signs)</u>	<u>\$25</u>	<u>\$20</u>
<u>10.10.A-G</u>	<u>Sign permit required/regulations.</u>	<u>\$25</u>	<u>\$20</u>
<u>10.11</u>	<u>Violation and penalties.</u>		
<u>10.15</u>	<u>Prohibited signs.</u>	<u>\$25</u>	<u>\$20</u>
<u>10.18</u>	<u>Sign maintenance and miscellaneous safety requirements.</u>	<u>Subsection:</u> A. <u>\$25</u> B. <u>\$25</u> C. <u>\$25</u> D. <u>\$25</u> E. <u>*\$50</u> F. <u>*\$50</u> G. <u>\$25</u> H. <u>*\$50</u> I. <u>\$25</u> J. <u>\$25</u> K. <u>\$25</u> L. <u>*\$50</u>	<u>Subsection:</u> A. <u>\$20</u> B. <u>\$20</u> C. <u>\$20</u> D. <u>\$20</u> E. <u>*\$30</u> F. <u>*\$30</u> G. <u>\$20</u> H. <u>*\$30</u> I. <u>\$20</u> J. <u>\$20</u> K. <u>\$20</u> L. <u>*\$30</u>
<u>11.2</u>	<u>General requirements. (landscaping)</u>	<u>\$25</u>	<u>\$20</u>
<u>11.3</u>	<u>Landscape materials requirements standards.</u>	<u>\$25</u>	<u>\$20</u>
<u>11.7.G</u>	<u>Tree preservation and removal.</u>	<u>\$25</u>	<u>\$20</u>
<u>11.8</u>	<u>Irrigation requirements</u>	<u>\$25</u>	<u>\$20</u>
<u>11.9</u>	<u>Landscape installation and maintenance requirements.</u>	<u>\$25</u>	<u>\$20</u>
<u>13.1</u>	<u>Uplands protection.</u>	<u>\$25</u>	<u>\$20</u>
<u>13.2</u>	<u>Wetlands protection.</u>	<u>\$25</u>	<u>\$20</u>
<u>14.2</u>	<u>Required plan.</u>	<u>\$25</u>	<u>\$20</u>
<u>14.8</u>	<u>Site construction plans.</u>	<u>\$25</u>	<u>\$20</u>
<u>15.1</u>	<u>Applicability of subdivision plat review.</u>	<u>\$25</u>	<u>\$20</u>
<u>17.21</u>	<u>Development permit required prior to undertaking any development activity.</u>	<u>\$25</u>	<u>\$20</u>
<u>Code of Ordinances</u>			
<u>6-1</u>	<u>Hours of sale – permitted. (alcohol)</u>	<u>\$25</u>	<u>\$20</u>
<u>6-2</u>	<u>Same – prohibited (alcohol)</u>	<u>\$25</u>	<u>\$20</u>
<u>6-3</u>	<u>Distance of establishments from schools.</u>	<u>\$50</u>	<u>\$30</u>
<u>6.5</u>	<u>Possession or consumption in public prohibited.</u>	<u>\$25</u>	<u>\$20</u>

<u>10-52</u>	<u>Permit required. (special events)</u>	<u>\$25</u>	<u>\$20</u>
<u>14-29</u>	<u>Annual vaccination and licensing requirement.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-30</u>	<u>Application for license; renewal; fees; issuance of tags; transfer; licensing agents; records; exemptions.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-31</u>	<u>Ownership responsibilities; responsibilities of the public.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-36</u>	<u>Unlawful for livestock to run at large; harboring wild animals.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-40</u>	<u>Interference with animal control authority.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-68</u>	<u>Bird and wildlife sanctuary; unlawful to shoot or trap birds and certain animals; signs.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-69</u>	<u>Animals in parks, on sidewalks, in commercial districts and certain other areas; riding horses or mules.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-70</u>	<u>Keeping of livestock and fowl restricted.</u>	<u>\$25</u>	<u>\$20</u>
<u>14-72</u>	<u>Disposition of dead animals.</u>	<u>\$25</u>	<u>\$20</u>
<u>14.74</u>	<u>Damaging temporary holding facilities and animal control equipment.</u>	<u>\$25</u>	<u>\$20</u>
<u>18-1</u>	<u>Installation or erection of trim or skirted barriers for certain elevated structures.</u>	<u>\$25</u>	<u>\$20</u>
<u>18-2.d</u>	<u>Posting of numbers on buildings. (addresses)</u>	<u>\$25</u>	<u>\$20</u>
<u>18-6</u>	<u>Anchoring of utility sheds; permit required.</u>	<u>\$25</u>	<u>\$20</u>
<u>18-31</u>	<u>Building permits required.</u>	<u>\$25</u>	<u>\$20</u>
<u>18-32</u>	<u>Same—Application; contents; state and county approvals for certain building permit applications.</u>	<u>\$25</u>	<u>\$20</u>
<u>18-83</u>	<u>Permits. (electric work)</u>	<u>\$25</u>	<u>\$20</u>
<u>18-203</u>	<u>Requirements for installation. (grease traps)</u>	<u>\$30</u>	<u>\$25</u>
<u>18-207</u>	<u>Requirements for scheduled maintenance (grease traps)</u>	<u>\$25</u>	<u>\$20</u>
<u>18-208</u>	<u>Permitting and inspections. (grease traps)</u>	<u>\$25</u>	<u>\$20</u>

<u>18-209</u>	<u>Prohibitions against the use of solvents (grease traps)</u>	<u>\$25</u>	<u>\$20</u>
<u>22-28</u>	<u>Persons subject to local business tax.</u>	<u>\$25</u>	<u>\$20</u>
<u>22-29</u>	<u>Required. (Business Tax Receipt)</u>	<u>\$25</u>	<u>\$20</u>
<u>22-42</u>	<u>Preservation and display of local business tax receipt.</u>	<u>\$25</u>	<u>\$20</u>
<u>22-57</u>	<u>Security Measures. (Convenience Business)</u>	<u>\$50</u>	<u>\$30</u>
<u>26-3</u>	<u>Election/political signs</u>	<u>\$25</u>	<u>\$20</u>
<u>30-27</u>	<u>Unlawful and prohibited acts generally; enforcement by police department.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-28</u>	<u>Radios, television sets, musical instruments, and similar devices.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-29</u>	<u>Loudspeakers and amplifiers.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-30</u>	<u>Construction equipment and activity.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-31</u>	<u>Vehicle repair in residential areas.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-32</u>	<u>Skateboard ramps.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-33</u>	<u>Sound amplification.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-57</u>	<u>Conditions declared public nuisances.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-58</u>	<u>Conditions declared a Public Nuisance (accumulation of trash, litter, filth, waste, scrap lumber, meat or animal matter, fecal matter, unsightly or insanitary conditions, etc.)</u>	<u>Subsection:</u> (1) <u>\$25</u> (2) <u>*\$50</u> (3) <u>\$25</u> (4) <u>*\$50</u> (5) <u>\$25</u> (6) <u>\$25</u> (7) <u>*\$50</u> (8) <u>\$25</u> (9) <u>\$25</u> (10) <u>*\$50</u> (11) <u>*\$50</u> (12) <u>\$25</u> (13) <u>\$25</u> (14) <u>*\$50</u> (15) <u>*\$50</u> (16) <u>\$25</u> (17) <u>\$25</u> (18) <u>\$25</u> (19) <u>\$25</u> (20) <u>*\$50</u> (21) <u>*\$50</u> (22) <u>*\$50</u>	<u>Subsection:</u> (1) <u>\$20</u> (2) <u>*\$30</u> (3) <u>\$20</u> (4) <u>*\$30</u> (5) <u>\$20</u> (6) <u>\$20</u> (7) <u>*\$30</u> (8) <u>\$20</u> (9) <u>\$20</u> (10) <u>*\$30</u> (11) <u>*\$30</u> (12) <u>\$25</u> (13) <u>\$25</u> (14) <u>*\$30</u> (15) <u>*\$30</u> (16) <u>\$20</u> (17) <u>\$20</u> (18) <u>\$20</u> (19) <u>\$20</u> (20) <u>*\$30</u> (21) <u>*\$30</u> (22) <u>*\$30</u>
<u>30-59</u>	<u>Abandoned Vehicles.</u>	<u>\$25</u>	<u>\$20</u>
<u>30-83</u>	<u>Landscape irrigation schedules.</u>	<u>1st Violation: Warning</u>	<u>\$50 second violation</u>

<u>34-29</u>	<u>Penalty for violation of fire prevention codes.</u>	<u>\$50</u>	<u>\$30</u>
<u>34-71</u>	<u>Approval required. (open fires)</u>	<u>\$25</u>	<u>\$20</u>
<u>42-2</u>	<u>Disposal of substances detrimental to health.</u>	<u>\$50</u>	<u>\$30</u>
<u>42-3</u>	<u>Storage of hazardous materials.</u>	<u>\$50</u>	<u>\$30</u>
<u>42-31</u>	<u>Permitting mosquito breeding places prohibited.</u>	<u>\$25</u>	<u>\$20</u>
<u>54-57</u>	<u>Permit required for Temporary Certificate of Occupancy of Mobile home</u>	<u>\$25</u>	<u>\$20</u>
<u>54-72</u>	<u>Compliance with division. (mobile homes)</u>	<u>\$25</u>	<u>\$20</u>
<u>58-1</u>	<u>State misdemeanor laws adopted.</u>	<u>\$25</u>	<u>\$20</u>
<u>58-2</u>	<u>Camping on public streets or parks.</u>	<u>\$25</u>	<u>\$20</u>
<u>58-3</u>	<u>Leaving excavations and obstructions exposed at night.</u>	<u>\$25</u>	<u>\$20</u>
<u>62-2</u>	<u>Business tax receipt required. (soliciting)</u>	<u>\$25</u>	<u>\$20</u>
<u>62-3</u>	<u>Exhibition of business tax receipt. (solicitors)</u>	<u>\$25</u>	<u>\$20</u>
<u>62-4</u>	<u>Hours of solicitation.</u>	<u>\$25</u>	<u>\$20</u>
<u>62-5</u>	<u>Solicitor restrictions.</u>	<u>\$25</u>	<u>\$20</u>
<u>62-21</u>	<u>Registration required. (solicitors)</u>	<u>\$25</u>	<u>\$20</u>
<u>62-41</u>	<u>Permit required.</u>	<u>\$25</u>	<u>\$20</u>
<u>62-62</u>	<u>Regulations. (soliciting)</u>	<u>\$25</u>	<u>\$20</u>
<u>62-63</u>	<u>Prohibition of interference with traffic flow. (soliciting)</u>	<u>\$25</u>	<u>\$20</u>
<u>62-64</u>	<u>Permits. (soliciting)</u>	<u>\$25</u>	<u>\$20</u>
<u>62-80</u>	<u>Seasonal sales vendor.</u>	<u>\$25</u>	<u>\$20</u>
<u>62-81</u>	<u>Loud noises and speaking devices.</u>	<u>\$25</u>	<u>\$20</u>
<u>70-1</u>	<u>Obstructing, destroying public ways generally.</u>	<u>\$50</u>	<u>\$30</u>
<u>70-71</u>	<u>Permit required for installation or alteration. (culvert)</u>	<u>\$25</u>	<u>\$20</u>
<u>70-72</u>	<u>Required material; size. (culvert)</u>	<u>\$25</u>	<u>\$20</u>
<u>70-73</u>	<u>Installation and maintenance. (culverts)</u>	<u>\$25</u>	<u>\$20</u>
<u>70-48</u>	<u>Sidewalk sales-Prohibited</u>	<u>\$25</u>	<u>\$20</u>
<u>78-78</u>	<u>Application. (water and wastewater system)</u>	<u>\$25</u>	<u>\$20</u>

<u>78-79</u>	<u>Connection with water or wastewater systems required.</u>	<u>\$50</u>	<u>\$30</u>
<u>78-88</u>	<u>Unlawful Connections. (to wastewater/water)</u>	<u>\$50</u>	<u>\$30</u>
<u>78-91</u>	<u>Maintenance of plumbing system and access.</u>	<u>\$25</u>	<u>\$20</u>
<u>78-99</u>	<u>Permit required to draw water from fire hydrants.</u>	<u>\$25</u>	<u>\$20</u>
<u>78-100</u>	<u>Prohibition against damaging equipment.</u>	<u>\$50</u>	<u>\$30</u>
<u>78-101</u>	<u>Required installation and maintenance of backflow prevention devices.</u>	<u>\$50</u>	<u>\$30</u>
<u>78-105</u>	<u>Wells and lawn sprinkler system.</u>	<u>\$30</u>	<u>\$20</u>
<u>78-133</u>	<u>Customer base. (stormwater fee)</u>	<u>\$25</u>	<u>\$20</u>
<u>14-31(1-9)</u>	<u>Pet ownership requirements (Leash requirements, failure to remove pet fecal matter from public areas)</u>	<u>\$25</u>	<u>\$20</u>
<u>18-2 (c-7) (d-1-5)</u>	<u>Visible address numbers on home/building required</u>	<u>\$25</u>	<u>\$20</u>
<u>30-28</u>	<u>Radios, television sets, musical instruments, and similar devices: Times playing are prohibited</u>	<u>\$25</u>	<u>\$20</u>
<u>30-29</u>	<u>Loudspeakers and Amplifiers: Times playing are prohibited</u>	<u>\$25</u>	<u>\$20</u>
<u>30-30</u>	<u>No outside Construction between 7AM and 7PM</u>	<u>\$25</u>	<u>\$20</u>
<u>30-31</u>	<u>Unlawful to repair, rebuild or test motor Vehicle between 7AM and 7PM in any residential area</u>	<u>\$25</u>	<u>\$20</u>
<u>30-32</u>	<u>Unlawful to use a skateboard ramp or anything similar in residential neighborhood</u>	<u>\$25</u>	<u>\$20</u>

	<u>between 7AM and 7PM</u>		
<u>30-33 (a)</u>	<u>Permit required for loud music/noise</u>	<u>\$25</u>	<u>\$20</u>
<u>54-42</u>	<u>Prerequisites to park recreational vehicles and mobile homes in areas zoned for that purpose</u>	<u>\$25</u>	<u>\$20</u>
<u>54-44</u>	<u>Visiting Rec Vehicles -Restrictions</u>	<u>\$25</u>	<u>\$20</u>
<u>62-1 (a-f)</u>	<u>Peddler/solicitor must obtain permit - Failure to do so</u>	<u>\$25 or 50% of the cost of the permit</u>	<u>\$20</u>
<u>62-2</u>	<u>Business Tax Receipt Required</u>	<u>\$25</u>	<u>\$20</u>
<u>62-4</u>	<u>Hours of Solicitation</u>	<u>\$25</u>	<u>\$20</u>
<u>62-5 (a-g)</u>	<u>Solicitor restrictions</u>	<u>\$25</u>	<u>\$20</u>
<u>62-21</u>	<u>Failure to register Organization to solicit funds/donations in residential areas</u>	<u>\$25</u>	<u>\$20</u>
<u>62-25</u>	<u>Requirement of all solicitors to have Credentials available</u>	<u>\$25</u>	<u>\$20</u>
<u>62-41</u>	<u>Permit required for Commercial Solicitors</u>	<u>\$25</u>	<u>\$20</u>
<u>62-62(1-3)</u>	<u>Solicitation regulations</u>	<u>\$25</u>	<u>\$20</u>
<u>62-63</u>	<u>Prohibition of interference with traffic flow</u>	<u>\$25</u>	<u>\$20</u>
<u>62-64(a-i)</u>	<u>Permit required for solicitation of charitable funds on street curb or city right of way.</u>	<u>\$25</u>	<u>\$20</u>
<u>62-81</u>	<u>Use of Loud Noises/Loudspeakers to sell goods/merchandise</u>	<u>\$25</u>	<u>\$20</u>
<u>70-46</u>	<u>Obstructing sidewalks with boxes, lumber building materials.</u>	<u>\$25</u>	<u>\$20</u>
<u>70-48</u>	<u>Sidewalk sales.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-11</u>	<u>Driving on public grounds.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-13</u>	<u>Manner of parking.</u>	<u>\$25</u>	<u>\$20</u>

<u>74-14</u>	<u>Parking prohibited in specified places.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-15</u>	<u>Vehicle restriction on public thoroughfares.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-20</u>	<u>Parking for certain purposes prohibited.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-41(a-b)</u>	<u>Restrictions on Heavy Vehicles ((a)No trucks over 10,000 lbs. allowed on residential street except Willow. (b) vehicles in excess 22,000 lbs. axle wt. or semi-trucks w/ more than 3 axles may not park overnight)</u>	<u>\$25</u>	<u>\$20</u>
<u>74-42</u>	<u>No tandem trailer trucks may utilize a residential road .</u>	<u>\$25</u>	<u>\$20</u>
<u>International Property Maintenance Code</u>			
<u>304.1.1</u>	<u>Building exterior of structure unsafe</u>	<u>\$50</u>	<u>\$30</u>
<u>304.10</u>	<u>Stairways, decks, porches, and balconies (properly maintained, must have railings)</u>	<u>\$25</u>	<u>\$20</u>
<u>304.18</u>	<u>Building Security (Secured doors/openings, etc.)</u>	<u>\$25</u>	<u>\$20</u>
<u>304.108.1.3</u>	<u>Building unsafe for occupancy</u>	<u>\$25</u>	<u>\$20</u>
<u>304.7</u>	<u>Roof and drainage</u>	<u>\$25</u>	<u>\$20</u>
<u>305.1.1</u>	<u>Building interior structure unsafe</u>	<u>\$50</u>	<u>\$30</u>
<u>601.2</u>	<u>Owner shall not allow occupancy of a dwelling that does not meet the requirements of this chapter</u>	<u>\$25</u>	<u>\$20</u>
<u>Florida Building Code</u>			
<u>R310.1.1</u>	<u>Operational constraints and opening control devices. Windows must be able to be opened from the inside</u>	<u>\$50</u>	<u>\$30</u>
<u>R310.2.1</u>	<u>Minimum window opening. Windows must be able to be opened from inside</u>	<u>\$50</u>	<u>\$30</u>

Covered code sections for citations or notices; penalties.

<u>Code/Ordinance #</u>	<u>Title</u>	<u>Minimum Initial Fine</u>	<u>Minimum Daily Fine</u>
<u>Code of Ordinances</u>			
<u>14-31(1-9)</u>	<u>Pet ownership requirements (Leash requirements, failure to remove pet fecal matter from public areas)</u>	<u>\$25</u>	<u>\$20</u>
<u>18-2(c-7)(d-1-5)</u>	<u>Visible address numbers on home/building required</u>	<u>\$25</u>	<u>\$20</u>
<u>30-28</u>	<u>Radios, television sets, musical instruments, and similar devices: Times playing are prohibited</u>	<u>\$25</u>	<u>\$20</u>
<u>30-29</u>	<u>Loudspeakers and Amplifiers: Times playing are prohibited</u>	<u>\$25</u>	<u>\$20</u>
<u>30-30</u>	<u>No outside Construction between 7AM and 7PM</u>	<u>\$25</u>	<u>\$20</u>
<u>30-31</u>	<u>Unlawful to repair, rebuild or test motor Vehicle between 7AM and 7PM in any residential area</u>	<u>\$25</u>	<u>\$20</u>
<u>30-32</u>	<u>Unlawful to use a skateboard ramp or anything similar in residential neighborhood between 7AM and 7PM</u>	<u>\$25</u>	<u>\$20</u>
<u>30-33(a)</u>	<u>Permit required for loud music/noise</u>	<u>\$25</u>	<u>\$20</u>
<u>54-42</u>	<u>Prerequisites to park recreational vehicles and mobile homes in areas zoned for that purpose</u>	<u>\$25</u>	<u>\$20</u>
<u>54-44</u>	<u>Visiting Rec Vehicles - Restrictions</u>	<u>\$25</u>	<u>\$20</u>
<u>62-1(a-f)</u>	<u>Peddler/solicitor must obtain permit - Failure to do so</u>	<u>\$25 or 50% of the cost of the permit</u>	<u>\$20</u>
<u>62-2</u>	<u>Business Tax Receipt Required</u>	<u>\$25</u>	<u>\$20</u>
<u>62-4</u>	<u>Hours of Solicitation</u>	<u>\$25</u>	<u>\$20</u>
<u>62-5(a-g)</u>	<u>Solicitor restrictions</u>	<u>\$25</u>	<u>\$20</u>
<u>62-21</u>	<u>Failure to register Organization to solicit funds/donations in residential areas</u>	<u>\$25</u>	<u>\$20</u>
<u>62-25</u>	<u>Requirement of all solicitors to have Credentials available</u>	<u>\$25</u>	<u>\$20</u>
<u>62-41</u>	<u>Permit required for Commercial Solicitors</u>	<u>\$25</u>	<u>\$20</u>
<u>62-62(1-3)</u>	<u>Solicitation regulations</u>	<u>\$25</u>	<u>\$20</u>
<u>62-63</u>	<u>Prohibition of interference with traffic flow</u>	<u>\$25</u>	<u>\$20</u>
<u>62-64(a-i)</u>	<u>Permit required for solicitation of charitable funds on street curb or city right of way.</u>	<u>\$25</u>	<u>\$20</u>
<u>62-81</u>	<u>Use of Loud Noises/Loudspeakers to sell goods/merchandise</u>	<u>\$25</u>	<u>\$20</u>
<u>70-46</u>	<u>Obstructing sidewalks with boxes, lumber building materials.</u>	<u>\$25</u>	<u>\$20</u>
<u>70-48</u>	<u>Sidewalk sales.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-11</u>	<u>Driving on public grounds.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-13</u>	<u>Manner of parking.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-14</u>	<u>Parking prohibited in specified places.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-15</u>	<u>Vehicle restriction on public thoroughfares.</u>	<u>\$25</u>	<u>\$20</u>
<u>74-20</u>	<u>Parking for certain purposes prohibited.</u>	<u>\$25</u>	<u>\$20</u>

<u>74-41(a-b)</u>	<u>Restrictions on Heavy Vehicles ((a)No trucks over 10,000 lbs. allowed on residential street except Willow. (b) vehicles in excess 22,000 lbs. axle wt. or semi trucks w/ more than 3 axles may not park overnight)</u>	<u>\$25</u>	<u>\$20</u>
<u>74-42</u>	<u>No tandem trailer trucks may utilize a residential road</u>	<u>\$25</u>	<u>\$20</u>

Any ordinance or code section not listed in the foregoing table may nevertheless be enforced by the code enforcement officer and special master, subject to procedures set forth in this division, and the code enforcement officer and special master may determine and assess penalties there- fore, subject to the limitations imposed by F.S. § 162.09(2)(a), and, in addition thereto, the special master may assess all charges, costs of investigation, attorneys' fees and other fees and costs incurred in the prosecution of the case and in addition thereto interest and other penalties which are payable under any code section, ordinance, resolution, rule or regulation which is then being enforced hereunder.

(2) Assessing costs. Costs shall be payable by a violator who is found to have violated the City's Code of Ordinances and/or Land Development Code guilty and shall be determined by the special master as follows:

The minimum costs payable shall be at least \$15.00 for any matter in which the special master has rendered an order and at least \$30.00 for any matter in which the special master has conducted a hearing. In appropriate circumstances the special master may order additional costs and shall have discretion to waive costs.

ORDINANCE No. 2024-10

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA BY AMENDING CHAPTER 2 ADMINISTRATION, ARTICLE VII PROCUREMENT SECTION 2-237 BIDDING PROCEDEURES AND SECTION 2-238 PROCEDURE IN LIEU OF BIDDING; PROVIDING FOR RATIFICATION; AMENDMENT; CONFLICTS; SEVERABILITY; CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Fellsmere, Florida is a duly constituted municipality having such powers and authority conferred upon it by the Florida Constitution and Chapter 166 Florida Statutes; and

WHEREAS, the City Council held a duly advertised public hearing and has determined that the amendments to the Code of Ordinances of the City of Fellsmere, Florida are in the best interest of the City and that the public health, safety, environmental and general welfare of the citizens of the City will be furthered by the amendments to the Code of Ordinances.

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. AMENDMENT. That Section 2-237 and Section 2-238 of the Code of Ordinances of the City of Fellsmere, Florida are amended to read as set forth in Exhibit “A” attached hereto and by this reference made a part hereof (~~strike through~~ indicates deleted text, and underline represents added text, omitted sections from the chapter are unchanged by this Ordinance or are reserved).

SECTION 3. CONFLICTS. All previous ordinances or parts of ordinances, resolutions, or motions of the City which conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. 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 5. CODIFICATION. The provisions of this Ordinance may be incorporated into the Code of Ordinances of the City of Fellsmere, Florida and the word “ordinance” may be changed to “section”, “article” or other appropriate word, and the sections of the ordinance may be re-titled, re-numbered or re-lettered, to accomplish such codification. Grammatical, typographical and other like errors may be corrected, and additions, alterations and omissions not

affecting the construction or meaning of this Ordinance and the Code or Ordinance may be freely

made.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its 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 Herrera	_____
Council Member Inocensia Hernandez	_____
Council Member Gerald Renick	_____
Council Member Jessica Salgado	_____

The Mayor thereupon declared this Ordinance fully passed and adopted this _____ day of _____, 202__.

CITY OF FELLSMERE, FLORIDA

ATTEST:

Joel Tyson, Mayor

Maria Suarez-Sanchez, City Clerk

I HEREBY CERTIFY that Notice of the public hearing 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 _____, 202__, and the first reading was held on the _____ day of _____, 202__, and the public hearing and second and final reading was held on the _____ day of _____, 202__.

Maria Suarez-Sanchez, City Clerk

**EXHIBIT “A”
TO
ORDINANCE NO. 2024-10**

DIVISION 1. - GENERALLY

Sec. 2-237. - Bidding procedures.

Projects that require competitive bids include:

1. construction projects that are projected to cost more than \$200,000, Florida Statutes § 255.0525 (2);
2. commodities or contractual services in excess of \$35,000, Florida Statutes § 287.057;
3. utility (includes stormwater) construction projects that are projected to cost more than \$25,000, Florida Statutes § 180.24(1); and
4. utility (includes stormwater) materials and service projects that are projected to cost more than \$10,000, Florida Statutes § 180.24(2).

The following procedures shall be followed if bidding is used and the procedures are not otherwise modified.

(a) *Notice inviting bids.* Any notice for bids shall be considered an invitation to potential bidders to submit offers to the city in conformity with the city's invitation. All bids received shall be considered irrevocable offers until such time as the city council accepts an offer or rejects the offer. ~~Florida Statutes 287.057 stipulates that purchases of commodities or contractual services in excess of \$35,000.00 (presently) requires competitive solicitation.~~ A sole source or sole brand purchase may be authorized by the city manager (without bidding) after receipt of proper documentation for the originating department and a review of the available brands or sources has been completed. A record of the sole source or sole brand request is maintained in finance.

(b) *Publication of notice.* Notice shall generally be by publication in at least one newspaper of general circulation in the city. In addition, the city manager may solicit bids directly from prospective bidders.

- 1.- For non-utility commodities or contractual services in excess of \$35,000.00 and for non-utility construction projects that are projected to cost more than \$200,000, such projects shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. The solicitation of competitive bids or proposals for construction project that is projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
2. For utility projects where construction is in excess of \$25,000 or commodities or services are in excess of \$10,000, such projects shall be advertised by the publication of a notice in a Newspaper of general circulation in the county in which said municipality is located at least once each week for 2 consecutive weeks, or by posting three notices in three conspicuous places in said municipality, one of which shall be on the door of the city hall; and that at least 10 days shall elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of such contract documents.

(c) *Bid bonds.* When deemed necessary by the city manager, bid bonds may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety after final action. A successful bidder shall forfeit any surety required by the city upon failure on his part to enter a contract with ten days after receipt of a proposed contract from the city, unless such time is extended by the city.

(d) *Bid opening procedures.*

(1) *Sealed.* Bids shall be submitted to the city clerk sealed and shall be identified as bids on the envelope.

(2) *Opening.* Bids shall be opened in public at the time and place stated in the public notice. Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement.

(3) *Tabulation.* A tabulation of all bids received shall be available for public inspection.

(e) *Rejection of bids.* The city council shall have the authority to reject any or all bids, or parts thereof, or any or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest shall be served thereby. Further, after rejection of all bids, the city council may solicit for new bids. The city manager shall have this same authority with respect to bids for contracts under \$15,000.00.

(f) *Bidders in default to city.* The city council may reject the bid of a contractor who is in default of the payment of city taxes, licenses, or other monies due the city. The city manager shall have this same authority with respect to bids for contracts under \$15,000.00.

(g) *Local bidders.* Local bidders may be afforded a preference by the city council if this is in the public interest. The city manager shall have the same authority with respect to bids for contracts under \$15,000.00.

(h) *Award of contract.* The city council, after review of bids received, may award the contract to the bidder who, in the view of the city council, has submitted the bid that is in the overall best interest of the city. The city manager shall have the same authority with respect to bids for contracts under \$15,000.00.

(i) *Payment and performance bonds.* The city manager shall have the authority to require a payment and performance bond before entering into a contract in such amount as he/she shall find reasonably necessary to protect the best interest of the city. Any requirement under this section shall be included in the bid specifications. See Pursuant to F.S. § 255.05, a payment and performance bond will be required for all projects over \$200,000. As governed by Florida State Statute 255.05, a person entering into a formal contract with city, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company.

i. *Bond Requirements.* The bond must state on its front page:

1. The name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity.
2. The contract number assigned by the contracting public entity.
3. The bond number assigned by the surety.
4. A description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.

ii. *Bond Exemption.* At the discretion of the city manager awarding such contract when such work is done that is for \$200,000 or less may be exempted from executing the payment and performance bond. If an exemption is granted, the officer or official is not personally liable to persons suffering loss because of granting such exemption.

iii. *Bond Amount.* The amount of the bond shall equal the contract price, except that for a contract in excess of \$250 million, if the city finds that a bond in the amount of the contract price is not reasonably available, the city shall set the amount of the bond at the largest amount reasonably available, but not less than \$250 million.

iv. For construction-management or design-build contracts, if the city does not include in the bond amount the cost of design or other non-construction services, the bond may not be conditioned on performance of such services or payment to persons furnishing such services.

(j) *Waiver of bidding procedures.* The city council may waive or modify the bidding procedures on specific contracts except as prohibited by state law.

(k) *Professional services.* Public announcement and qualification procedures, competitive selection, and competitive negotiation for professional services of architects, professional engineers, landscape architects, or registered land surveyors shall be as specified in F.S. § 287.055, as applicable, and as said section exists or may be amended.

(l) *Public works.* Public works contracts as defined in F.S. § 180.24, shall be bid in accordance with that section to the extent the section is applicable.

(Ord. No. 06-14, § II, 2-16-2006; Ord. No. 2018-10, § 2(Exh. A), 11-1-2018)

Secs. 2-231—2-235. - Reserved.

Sec. 2-238. – Procedures in Lieu of Bidding.

Uniform guidance standards stipulate that purchases where the aggregate dollar amount does not exceed \$3,000.00 (or \$2,000.00 if the procurement is construction and subject to Davis-Bacon) are defined as "micro-purchases". Where practical, the city will distribute micro-purchases equitably among qualified suppliers. No competitive quotes are required if management determines that the price is reasonable.

For purchases in excess of \$3,000, the following procedures shall be followed if bidding is not used and the procedures are not otherwise modified.

>\$3,000 - \$5,000 – informal competitive quotes are required

>\$5,000 - \$15,000 – three formal written quotes are required

>\$15,000 – bidding threshold - three formal written quotes are required

The City Manager may delegate purchases up to \$7,500.00 to Department Heads subject to Department Heads following the purchasing requirements set forth herein.

As permitted by Florida Statutes § 255.0525 (2), in cases of emergency, the procedures required in Section 2-237 may be altered by city in any manner that is reasonable under the emergency circumstances. The term "emergency" means an unexpected turn of events that causes an immediate danger to the public health or safety, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential governmental service.