



Fellsmere

CITY COUNCIL MEETING
22 S. Orange St., Fellsmere FL
April 18, 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 March 21, 2024.

6. PROCLAMATION: (a) National Public Safety Telecommunicators Week

7. PUBLIC HEARING:

(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 MARIAN 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. / **2nd Reading and 1st Public Hearing for April 18,2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.****

(b) Declare 1037 Vernon Street as surplus property. /**Public Hearing**

8. PUBLIC COMMENTS:

9. MANAGER'S MATTERS:

10. MAYOR'S MATTERS:

(a) Police Department Report – March

(b) Public Works Department Report - March

(c) Development Report

(d) Grants Report

11. COUNCIL MEMBER'S MATTERS:

12. CITY ATTORNEY'S MATTERS:

13. NEW BUSINESS:

- (a) Abatement Request for 36 South Lime Street Code Enforcement Lien.
- (b) Approval of Post Occupancy Agreement for Moss property.
- (c) Approval of Cemetery Cell Tower Lease Agreement and Authorize Mayor to execute Lease Agreement.
- (d) **RESOLUTION NO. 2024-38/A** RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA AUTHORIZING THE EXTENSION OF THE LEASE AGREEMENT FOR CERTAIN CITY OWNED REAL PROPERTY PURSUANT TO SECTION 2-230 OF THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA, FOR THE SUBSTANCE ABUSE COUNCIL OF INDIAN RIVER COUNTY, INC. D/B/A SUBSTANCE AWARENESS CENTER OF INDIAN RIVER COUNTY; PROVIDING FOR THE PURPOSE FOR WHICH SUCH REAL PROPERTY WILL BE USED; PROVIDING FOR THE TERM OF THE EXTENSION OF THE LEASE AGREEMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.
- (e) Approval of Change Order #2 to Work Order #4 with Culpepper & Terpening to provide for additional survey work for the Rail Trail from Broadway to the State Park Preserve
- (f) Approval of Employment Contract for Public Works Engineering Inspector.
- (g) Discussion to provide direction for code changes to regulate mobile food trucks in Fellsmere.
- (h) Discussion to provide direction on required action for outstanding code enforcement cases.
- (i) Approval of ARPA Amendment.
- (j) **RESOLUTION NO. 2024-39/A** RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AUTHORIZING THE PURCHASE OF LAND LOCATED AT AND INCLUDED WITHIN THE SENIOR LEAGUE FIELD FROM THE STATE OF FLORIDA, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF STATE LANDS, FOR A COST OF \$1,500.00 PURSUANT TO THE CONTRACT ATTACHED HERETO AND AUTHORIZING THE MAYOR TO SIGN THE CONTRACT; PROVIDING FOR RATIFICATION; PROVIDING FOR APPROVAL OF CONTRACT; AUTHORIZATION; AND PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

RESOLUTION NO. 2024-40/A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AUTHORIZING THE PURCHASE OF LAND LOCATED ALONG KENTUCKY AVENUE FOR THE KENTUCKY GREENWAY STORMWATER PROJECT FROM THE STATE OF FLORIDA, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF STATE LANDS, FOR A COST OF \$1,500.00 PURSUANT TO THE CONTRACT ATTACHED HERETO AND AUTHORIZING THE MAYOR TO SIGN THE CONTRACT; PROVIDING FOR RATIFICATION; PROVIDING FOR APPROVAL OF CONTRACT; AUTHORIZATION; AND PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.
- (k) Award proposal and authorize Mayor to execute contract with Holler Construction, Inc. for the Senior League Park Concession Stand Renovation.

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/599741285>

To join meeting using your phone call 1-571-317-3122 Access Code: 599-741-285

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.

CO20240418AGENDA.DOC

**CITY COUNCIL MEETING
March 21, 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, Grant Administrator Laura Hammer, 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 March 7, 2024.

MOTION by Council Member Renick **SECONDED** by Council Member Hernandez to approve the minutes for the City Council Meeting of March 7, 2024

ALL AYES:

MOTION CARRIED 5-0

6. **PUBLIC HEARINGS:**

(a) ORDINANCE NO. 2024-15/ AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, ADOPTING THE ANNUAL UPDATE TO THE TEXT OF THE CAPITAL IMPROVEMENTS ELEMENT OF THE CITY OF FELLSMERE COMPREHENSIVE PLAN; PROVIDING FOR RATIFICATION; AUTHORITY; COMPREHENSIVE PLAN TEXT MODIFICATION; TRANSMITTAL; SEVERABILITY; CONFLICT AND PROVIDING FOR AN EFFECTIVE DATE. / *2nd Reading and Public Hearing for March 21, 2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.*

Mayor Tyson introduced the Ordinance and Attorney Dill read Ordinance No 2024-15, by title only.

Chief Touchberry stated that it is staff's recommendation for Council to approve the ordinance but prior to doing City Planner Bob Loring will give a brief update on the issue.

City Planner Bob Loring stated this is something the City does every year. It is an exercise that is handed down from the state and goes to the county and the county hands it down to the local municipalities. What this is the Capital Improvement Plan that both the cities and elements of Indian River County do so that it creates an environment where they can find common projects where there might be some synergy so they can leverage monies or projects to get things done. In the agenda packet are pages nine through 12 is the City of Fellsmere's Capital Improvement plan. And what is in there are project stormwater related street related and those are ongoing projects. Some of them which have numbers in front of them are projects that are typically bound by a grant, so they are time sensitive. Other projects are just long-term ongoing projects. And they brought this same item to the Planning and Zoning Board last night and their recommendation was for approval with the caveat that they want a bigger stake in how projects are brought onto and off of the Capital Improvement Plan.

Mayor Tyson opened the Public Hearing and asked if anyone in the audience wished to speak on Ordinance 2024-15, hearing no comments he closed the public hearing.

MOTION by Council Member Herrera **SECONDED** by Council Member Hernandez to approve Ordinance No. 2024-15.

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

7. PUBLIC COMMENTS:

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

8. MANAGER'S MATTERS: Chief Touchberry continued with his matters.

- **Impact Fee Payment Plans for Small Businesses-** While this impact fee is due all at once, the city has no official agreement with the county and he is considering that the city will pay upfront for the impact fees, and then collect payments from the businesses that are trying to develop. It's a way to promote the growth and development and easier way for the people to do it. That is an idea that Manager Mathes is exploring and wanted to bring this to their attention.

- **July Council Meeting Date (July 4th Conflict)** – City Council agreed to only have one meeting in July. The Council Meeting will be scheduled for July 11th, 2024.

- **Federal Wetland Permitting** — on hold due to federal court injunction.

Attorney Warren Dill stated that two years ago, the State of Florida convinced the Army Corps to allow the State of Florida to do all the wetland permitting. It has been on the books for a number of years and there are a number of organizations that are disappointed with the quality of the state's review of the wetlands, and they feel that the Army Corps did not have jurisdiction or did not have the authority to give their jurisdiction away to a state. That is the lawsuit is pending.

Chief Touchberry added that the city is looking at which projects might be affected, and they are talking with our consultants. And right now, tentatively, perhaps the State Street reservoir might be impacted, and the Preserve bathroom and boardwalks. More will be reported as the learn it, but right now, they just want to make Council to be aware.

- **Additional On-Street parking at Grant Park-** It is a popular park, and they are looking at the feasibility of expanding on street parking, specifically on the east side of west Grant Avenue, and also along State Street. They will explore that a little bit more and come back to City Council.

- **Form 6 due 7/1 — start early!** – Just a reminder for City Council.

- **4/6 Give a Ruck Event at Buffer Preserve-** This is an annual event done by a local veterans group. And they start in the Buffer Preserve, and they cross over the rail trail even though it is currently under construction, there will be no issues there into the Florida Tech obstacle course, from the north side of the rail trail. It is very well attended, and they are looking forward to it.

- **4/6 Fellsmere Day has been cancelled.**

- **Three of seven radar speed signs have been installed (EB Wyoming, SB on N. Myrtle, and SB on S. Broadway)** – He reminded City Council that they had authorized approval to spend ARPA funds on some radar speeds signs. They have now purchased seven of them and so far, three of them have been installed by the Public Works department, East Wyoming, East and Wyoming I should say, from Pine Street to North pine to North Willow, also on North Myrtle as you head southbound. And as you are heading south on South Broadway from kind of on 512. And those signs do collect data and they will be doing monthly downloads of that data so they can see what is going on in those areas.

- **Amending Article V, Sec. 5.3 of Land Development Code to accommodate Food truck operations.**

The state regulates how food trucks operate, but the city now has some concerns with that operation and staff are in the process of amending Article Five, Section five, three, or the land development code to accommodate food truck operations. Some issues are the city wants to know if they are licensed by the state and they want to know if they have permission to operate where they are and they cannot operate as a permanent facility. Once they have a version ready for Council to review, they will bring it to City Council.

- **Community Resource Center update-** They had a Community Resource Center event this week at the Heritage Center. And he just wanted to make Council aware of how that event went. It was a kickoff for a capital fundraising campaign. It was pretty well attended, people came, most of them representing local nonprofit, and community partners that they already worked with, there were some other folks that were in attendance that can help secure money in the future. It served as a way to just publicly kick off the campaign, create awareness, start dialogue, and move this project to the next phase and it was a good event.
- **Council can attend Ethics training in person in Ft. Pierce on 4/19 from 9a-2p or online before 7/1/24.**
- **Chlorination of City water will occur from April 15th through May 15th.** - They will advertise this to the community in a variety of ways, they will make sure they put in a water bill, and they will do something on social media. And we will utilize the sign marquee as well.
- **CDD presentation scheduled for Thursday, April 18th at 6PM**

An updated list of all active capital projects was shared with all Council Members.

- 9. MAYOR'S MATTERS:** (a) Police Department Report – February
 (b) Public Works Department Report – February

Mayor Tyson stated that he attended the Taxpayer's Associations, and they had candidates from the County Commission. He also attended the Council of Local Government in Fort Pierce. And yesterday he and Maria went to Treasure Coast Regional League of Cities in Sewell's Point.

10. COUNCIL MEMBER'S MATTERS:

- Council Member Herrera-** He stated he had no matters.
- Council Member Salgado-** She stated he had no matters.
- Council Member Hernandez –** She stated he had no matters.
- Council Member Renick –** He stated he had no matters.

- 11. CITY ATTORNEY'S MATTERS:** Attorney Dill reminded City Council that at their March 7th Council meeting there was a gentleman named Ian Welsh, he spoke briefly to the council about his need for space for his organization that he called Motivational Edge. He was able to speak with him in regard to the city's nonprofit situation that the city has leased space to in the building where they city already has two entities. He explained to him that the city is required to give them notice if the city intends to use that room or take that room away from them and he seemed to be very understanding. The most significant thing that came out was the for-profit status of his company. The city does not have any profits that they rent to and if they do, they are going to have to start collecting sales tax. He gave a brief summary of what they talked about.

Chief Touchberry stated that the central question they are asking was can they city use this space for profit what that would mean for the city and they were just waiting for information from the city attorney.

Attorney Warren Dill confirmed it can be done but for profits would have to pay sales tax, nonprofits do not pay sales tax. And he did confirm that they are a taxable for-profit corporation. This will be the Council's decision.

Mayor Tyson stated that they all will have to think about that.

Attorney Dill had nothing more to add.

12. NEW BUSINESS:

- (a) ORDINANCE NO. 2023-33/ AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN AND FUTURE LAND USE MAP SERIES AS REQUESTED BY MARION ESTATES; AMENDING THE TEXT OF THE COMPREHENSIVE PLAN CHAPTER 1. FUTURE LAND USE ELEMENT, GOAL FLUE A. LAND USE OBJECTIVE FLUE A-3 INFILL DEVELOPMENT AND REDEVELOPMEN, POLICY FLUE**

A-3.2. OVERLAY DISTRICT BOUNDARIES AND CHAPTER 1. FUTURE LAND USE ELEMENT GOAL FLUE B. FUTURE LAND USE MAP OBJECTIVE FLUE B-5 GARAFALO; 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 the 2nd Reading and Public Hearing for April 18,2024 at 7:00 P.M, City Council Chambers, 22 S. Orange St., Fellsmere, FL.

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

Attorney Warren Dill clarified that he used the name Garafalo and that is not before City Council, it is the name that was used because this is the name that the city has on their current Comp Plan.

Chief Touchberry stated City Council tasked the developer with reworking some things and they are back here tonight to address any questions or comments. They are looking to increase units from 320 to 332 and to change the mix of units from 152 Townhomes and 168 single-family homes to 150 townhomes and 182 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. City Council was given the development plan, draft development agreement and draft amendment annexation agreement. The goal is to do the first reading and then set for public hearing on April 18th. The developer is present if they have any questions.

City Council member asked if he could give a brief summary of the changes that he made.

Mr. Paladin stated that his engineer was also present, and that he had a PowerPoint presentation that he wanted to share. He stated that the biggest discussion they had last time was that City Council was against 40-foot lots and he eliminated the 40-foot lots, he did go back and redesign it with his engineer. And proceeded to introduce his engineer, Wesley Mills.

Wesley Mills, engineer for the Marian Estates project. He stated that pretty much all the amenities that were presented in the original project still remain within the project. They eliminated all the 40-foot lots. They have 60-foot lots around the entire perimeter and the internal lots are 50-foot lots. They kept the density the same; they are still at 332 units. There was an increase in townhomes from the original plan but gets more in line with the annexation agreement. The current design has 150 townhomes and 182 single family lots, of which 111 are 50-foot single family and 71 are 60-foot. But other than that, the project is the same. One thing that they will incorporate into construction documents is the perimeter of the project along the left side and on top, they going to try to maintain all the existing vegetation and then enhance that to keep that more of a natural look, the buffer along the bottom that abuts the neighboring properties will be a freshly landscaped with new vegetation just because of changes in the connection to the neighboring properties. He stated he was happy to answer any questions. Mr. Mills asked what are the dates for the public hearings. Attorney Dill confirmed that the Planning and Zoning Public Hearing will be on April 17th and the City Council Public Hearing will be on April 18th.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Renick **SECONDED** by Council Member Herrera to accept 1st Reading and Set 2nd Reading and Public Hearing for April 18,2024 on Ordinance No. 2023-33.

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

(b) RESOLUTION NO. 2024-23/ A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA AUTHORIZING THE EXTENSION OF THE LEASE AGREEMENT FOR CERTAIN CITY OWNED REAL PROPERTY PURSUANT TO SECTION 2-230 OF THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA, FOR LITERACY SERVICES OF INDIAN RIVER COUNTY, INC.; PROVIDING FOR THE PURPOSE FOR WHICH SUCH REAL PROPERTY WILL BE USED; PROVIDING FOR THE TERM OF THE EXTENSION OF THE LEASE AGREEMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2024-23, by title only.

Chief Touchberry stated that item b and c are related to the lease spaces Attorney Dill had spoken about earlier. Literacy has been leased for a number of years and that lease is currently expired since September 30,2023. And staff has determined that the current conditions can continue to be extended until September of this year. But the City is increasing their lease rate to \$200 a month as opposed to \$100. Literacy services will occupy one office with one large room and one additional larger will be shared by the Learning Alliance, Inc. At the end of the lease term, the city may choose to reallocate the shared room to another service provider if desired. The tenants know that this is all tentative on other needs in the community. The city has another entity that wants to come in, but they have had no conversation with them and that would be another nonprofit.

Attorney Dill clarified the lease will go from \$150 to \$200 a month.

Mayor Tyson stated that Carol Jean Jordan the Indian River County Tax Collector would also like to have a branch in Fellsmere if the city could find space for her.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Salgado **SECONDED** by Council Member Hernandez to approve Resolution No. 2024-23.
ALL AYES **MOTION CARRIED 5-0**

(c) RESOLUTION NO. 2024-24/ A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA AUTHORIZING THE EXTENSION OF THE LEASE AGREEMENT FOR CERTAIN CITY OWNED REAL PROPERTY PURSUANT TO SECTION 2-230 OF THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA, FOR THE LEARNING ALLIANCE, INC.; PROVIDING FOR THE PURPOSE FOR WHICH SUCH REAL PROPERTY WILL BE USED; PROVIDING FOR THE TERM OF THE EXTENSION OF THE LEASE AGREEMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2024-24, by title only.

Chief Touchberry stated he had nothing more to add to this item.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Hernandez **SECONDED** by Council Member Renick to approve Resolution No. 2024-24.
ALL AYES **MOTION CARRIED 5-0**

- (d) Authorize Mayor to execute contract with Safebuilt to implement nonexclusive building permit services.

Chief Touchberry stated that the next two items are interrelated. Staff recommends Mayor to execute contract with Safebuilt to implement nonexclusive building permit services. At a previous meeting Council directed to have an in-house Building Official, and he would be introducing him to Council tonight, and converting vendor services to nonexclusive with multiple vendors. The contract replaces the current contract with Safebuilt and turns them into a nonexclusive provider. CAPS was recently approved providing for two nonexclusive vendors to assist the newly hired Building Official. Warren and John drafted the contract. He introduced the new building official Kevin Klepac.

Kevin Klepac stated that he just recently started this week as the new building official and is extremely excited. He shared he grew up in Vero Beach, hunting and fishing growing up and he did 21 years in the Army. And now he is with the City of Fellsmere and really looking forward to it. He is looking at this as a career and not a short-term thing. And he is hoping that he can help make it a lot better place to and to definitely help permitting issues and stuff like that they are having, so they can help streamline that and actually get on a faster track.

Mayor Tyson thanked him for his service.

Chief Touchberry added that Kevin will be shadowing Safebuilt until the contract expires.

Attorney Rhodeback stated that they did not have any legal concern with the contract.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Hernandez **SECONDED** by Council Member Herrera to execute contract with Safebuilt to implement nonexclusive building permit services.

ALL AYES

MOTION CARRIED 5-0

- (e) Authorize Mayor to execute contract with Meritage for Community Core Building Services Software.

Chief Touchberry stated this is interrelated with the previous item. He added that this is the software that is needed to operate with, and staff recommends that the City Council authorizes the Mayor to execute the contract.

Attorney Rhodeback stated that this contract is also fine from a legal perspective.

Being no further discussion Mayor Tyson entertained a motion.

MOTION by Council Member Hernandez **SECONDED** by Council Member Salgado to execute contract with Meritage for Community Core Building Services Software.

ALL AYES

MOTION CARRIED 5-0

13. ADJOURNMENT:

There being no further business Mayor Tyson adjourned the meeting at 7:46p.m.

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

Maria F. Suarez-Sanchez, CMC, City Clerk
CO20240321MINUTES.DOC

PROCLAMATION

WHEREAS, emergencies can occur at any time that require police, fire, or emergency medical services; and

WHEREAS, when an emergency occurs the prompt response of first responders is critical to the protection of life and preservation of property; and

WHEREAS, the safety of our first responders is dependent upon the quality and accuracy of information obtained from citizens who telephone the Indian River County Sheriff's Office 911 Communication Center; and

WHEREAS, Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services; and

WHEREAS, Public Safety Telecommunicators are the single vital link for all first responders by monitoring their activities by radio, providing them information, and ensuring their safety; and

WHEREAS, Telecommunicators of the Indian River County Sheriff's Office have contributed substantially to the preservation of public safety in the City of Fellsmere by processing 9,986 calls for service in 2023, an average of 27 calls per day; which is seven calls less per day than in 2022, an indication of crime reduction efforts in Fellsmere, and

WHEREAS, each Telecommunicator has exhibited compassion, understanding and professionalism in the performance of their duties during the past year.

NOW, THEREFORE, I, Joel Tyson, Mayor of the City of Fellsmere, Florida do hereby proclaim April 14th through April 20th, 2024 as

"NATIONAL PUBLIC SAFETY TELECOMMUNICATORS' WEEK"

in honor of the men and women whose diligence and professionalism keep our City and citizens safe.

Joel Tyson, Mayor

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

Meeting Date: April 18, 2024

Agenda Item No. 7(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 type="checkbox"/> BID/RFP AWARD |
| <input checked="" type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM | |
| <input type="checkbox"/> Other: | |

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

RECOMMENDED MOTION/ACTION: Conduct first public hearing and authorize transmittal to the State of Florida.

Approved by City Manager Mark Mathes Date: 04/09/24

Originating Department:	Costs: Funding Source: Acct. #	Attachments: Ord. 2023-33 Comp 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 <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 150 townhomes and 182 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.

This item was heard extensively at first reading; informational items are not included in this packet.

**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~~ 4.85 dwelling units per acre in order to achieve a maximum of Three Hundred ~~Twenty~~ Thirty-Two (332) residential units (~~152150~~ town homes and ~~168182~~ single-family homes) on ~~Seventy-Sixty Eight and Forty Hundreths~~ (~~7068.40~~) acres. The commercial activity shall be limited to the Northern ~~TenEight~~ and ~~Seventy-seven-Thirty-SevenTwenty-One~~ One Hundredths (~~8,2110.37~~) 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

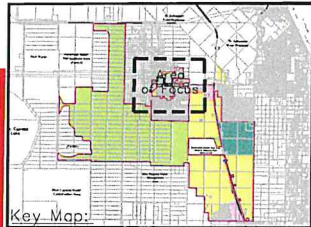
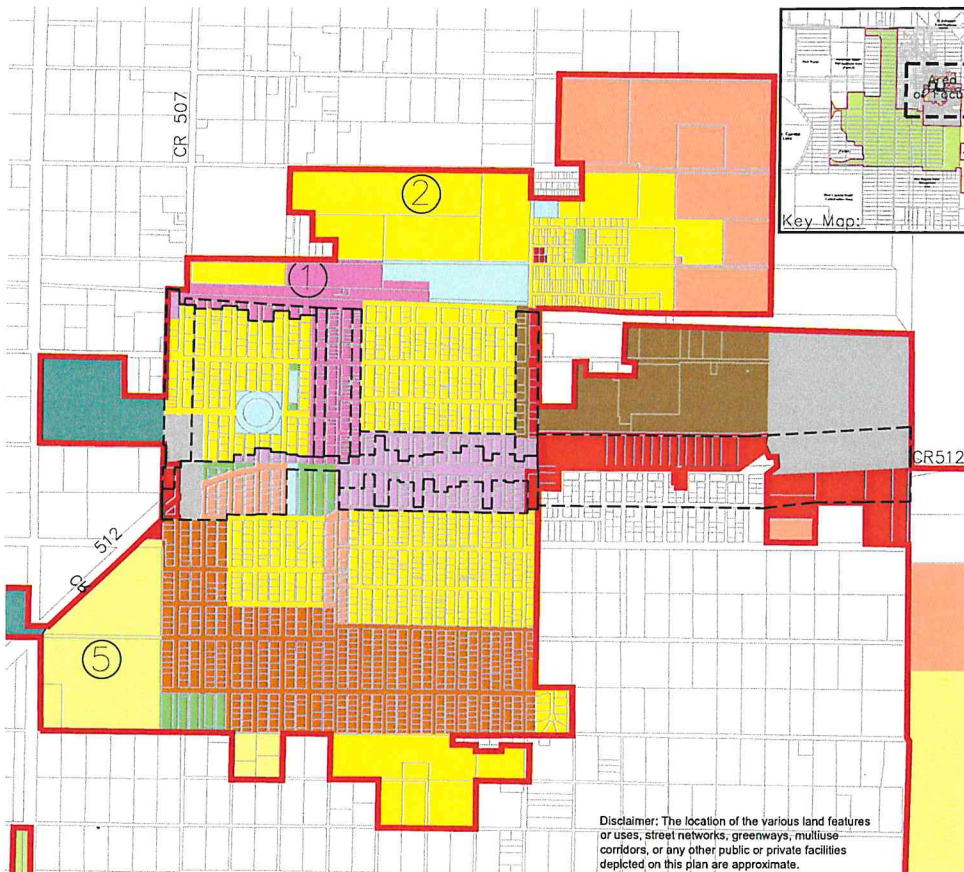
Policy FLUE A-3.2. - Overlay District Boundaries.

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.



- 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

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



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

Future Land Use Map

Figure 1-1C

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



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

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

Meeting Date: April 18, 2024

Agenda Item No. **7(b)**

- | | |
|-----------------------------------------------------------|-----------------------------------------|
| <input checked="" type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> Ordinance on Second Reading | |
| <input checked="" type="checkbox"/> Public Hearing | <input type="checkbox"/> DISCUSSION |
| <input 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: Declare 1037 Vernon Street as surplus property

RECOMMENDED MOTION/ACTION: Conduct public hearing and declare 1037 Vernon Street as surplus property and direct staff to proceed with advertised sale as a single developable lot.

Approved by City Manager *Maura Motta* Date: 4-9-24

Originating Department:	Costs: \$ 0.00 Funding Source: Acct. #	Attachments:
Department Review: <input type="checkbox"/> City Attorney _____ <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input 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 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 declare 1037 Vernon Street as surplus property and authorize sale by advertised bid. The property consists of two vacant 40' wide lots to be sold as one buildable lot. The City has no use for these lands. Costs in these parcels is \$12,128.75. Staff is requesting authorization to set the minimum bid, if the property is declared as surplus, to be \$12,500. These lots were foreclosed due to water liens, and the difference between the sale price and the lien amount would be deposited into the General Fund. AN inquiry was received from the daughter of the prior owner as to purchasing these lots if declared surplus.

#10(a)

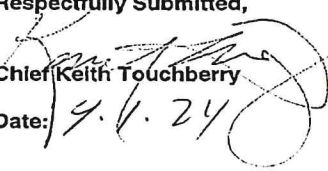


FELLSMERE POLICE DEPARTMENT

March 2024

	Monthly Total	Annual Total	Monthly Average
911 Hangup/Open line	20	63	4.00
Alarm	9	23	7.67
Animal Incident	3	22	7.33
Area Check	415	1332	444.00
Assault	0	0	0.00
Assist	36	106	35.33
ATV/Dir Bike	0	4	1.33
Burglary Auto	1	4	1.33
Burglary Residence	0	0	0.00
Burglary Business	0	0	0.00
CFS Fax	4	14	4.67
Civil	5	15	5.00
Crash Report	7	22	7.33
Criminal Mischief	3	4	1.33
DAV/Traffic Hazard	0	0	0.00
Death	1	1	0.33
Disturbance	12	30	10.00
Drug Incident	2	5	1.67
Follow Up	11	25	8.33
Found Property	2	5	1.67
Fraud	0	1	0.33
Larceny	0	0	0.00
Liquor Violation	0	0	0.00
Lost Property	1	2	0.67
Miscellaneous	70	190	63.33
Motor Vehicle Theft	1	1	0.33
Noise Disturbance	2	7	2.33
Parking Violation	6	17	5.67
Recovered Stolen Vehicle	0	0	0.00
Robbery	0	1	0.33
Runaway/Missing	2	6	2.00
Search	4	9	3.00
Shoplifting	0	0	0.00
Suspicious Incident	21	49	16.33
Suspicious Person	4	10	3.33
Traffic Incident	21	53	17.67
Transport	2	4	1.33
Trespass	3	3	1.00
TOT	4	14	4.67
Verbal Warning	35	77	25.67
Warrant Arrest	0	7	2.33
Training	1	2	0.67
CommendationAwards	0	0	0.00

TRAINING:
Managing Police Records - 7hrs
 Miriam Bedolla
Volunteers
 Terry Sharkey - 85.5 hrs
 David Norfolk - 36.5 hrs

Respectfully Submitted,

 Chief Keith Touchberry
 Date: 4.1.24

MARK MATHES
CITY MANAGER

PUBLIC WORKS

CITY OF FELLOSMERE



PUBLIC WORKS DIVISION

MARCH 2024

MONTHLY REPORT

Andy Shelton
Director of Public Works

March 2024

City of Fellsmere
Public Works
Total Monthly Hours

Assignment	Hours
Administration	0.0
Training	0.0
Edging	0.0
Weedeating	0.0
Blower	0.0
Weeding	39.0
Sprinklers	12.0
Mowing	54.0
Ditchwork	0.0
Catchbasins	0.0
Alleyways	3.0
Bushhog	43.5
Backhoe	26.5
Grading	74.5
Roadwork	54.0
Potholes	57.5
Storm Debris	0.0
Trash P/U Roads	5.0
Trash P/U Parks	155.0
Park Maintenance	190.5
Assist PD	0.0
Assist WD	14.0
Street Cleaning	0.0
Equipment Maintenance	11.0
Cemetery	16.0
Shop/Parts/Supplies	19.0
Building Maintenance	28.0
Water System	1.0
Sewer System	0.0
Other	9.0
Paid time off	85.0
Total Hours	897.5

Public Works Director
Andy Shelton

March 2024

City of Fellsmere
Public Works
Total monthly Hours

Employee	Administration	Training	Edging	Weedeating	Blower	Weeding	Sprinklers	Mowing	Ditchwork	Catchbasin	Alleyways	Bushhog	Backhoe	Grading	Roadwork	Potholes	Storm Debris	Trash P/U Roads	Trash P/U Parks	Park Maintenance	Assist PD	Assist WD	Street Cleaning	Equipment Maintenance	Cemetery	Shop/Parts/Supplies	Building Maintenance	Water System	Sewer System	Other	Paid time off	Total Hours		
Tommy	0.0	0.0	0.0	0.0	0.0	33.0	1.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.0	72.0	4.0	0.0	0.0	0.0	1.0	5.0	3.0	0.0	0.0	0.0	3.5	19.0	144.0		
Ivan	0.0	0.0	0.0	0.0	0.0	0.0	10.5	0.0	0.0	0.0	0.0	2.5	0.0	0.0	15.5	5.5	0.0	0.0	0.0	53.5	0.0	10.0	0.0	7.0	0.0	8.0	14.0	0.0	0.0	0.0	1.5	40.0	168.0	
Vinny	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	26.5	74.5	10.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	10.0	121.5	
Guillermo	0.0	0.0	0.0	0.0	0.0	0.0	0.0	7.0	0.0	0.0	3.0	22.0	0.0	0.0	11.0	52.0	0.0	0.0	20.0	39.0	0.0	4.0	0.0	2.0	6.0	0.0	2.0	0.0	0.0	0.0	0.0	0.0	0.0	168.0
Jesus	0.0	0.0	0.0	0.0	0.0	6.0	0.0	47.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.0	63.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	0.0	0.0	1.0	8.0	128.0		
Lencho	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	19.0	0.0	0.0	17.0	0.0	0.0	1.0	0.0	94.0	0.0	0.0	0.0	0.0	5.0	8.0	12.0	1.0	0.0	3.0	8.0	168.0		
Totals	0.0	0.0	0.0	0.0	0.0	39.0	12.0	54.0	0.0	0.0	3.0	43.5	26.5	74.5	54.0	57.5	0.0	5.0	155.0	190.5	0.0	14.0	0.0	11.0	16.0	19.0	28.0	1.0	0.0	9.0	85.0	897.5		

Director of Public Works
Andy Shelton

Status of Developments

DEVELOPMENT- thru 4/1/24	STATUS	NOTES
10 N. Myrtle - Tiny House Builder	Pre-Application	Application under development- updating site plan to accommodate new construction area.
102 Terrace- NEW STORAGE FACILITY - Redtail	Under Review	Annexation and development plan approval for new storage fac.
12 N. Elm - Retail Conversion	Post Approval	Singature on approval docs required
125 N. Broadway - Delicias Magi, Inc.	Post Approval	Alley ROW Dedication still required- spoke w applicant on 3/17/23 to sign ROW dedication/ easement dwg.
12645 CR-512 ALMANSA	Post Approval	To expand allowable uses
32 N Broadway - New Site Plan w/ Parking Lot	Post Approval	
36 N Myrtle Bait Shop	Pre-Application	Site Plan required to address new unpermitted uses (food truck) and missing HC parking and landscaping.
44 N. Pine - TCCH Clinic	Post Approval	Code Enforcement for failure to install required landscaping. Donation of alley ROW required at request of City.
6 N. Pine church	Post Approval	site modification implemented revised original approval related to stormwater- no connector to bldg.
6 S. Mulberry Street (Food Truck Lot)	Post Approval	Impact Fees & Stormwater Impact Fee due
6 S. Oak (Gas Station)	Post Approval	Code Enforcement. Missing landscaping.
81 N. Broadway - Yolanda Fruit Stand	Pre-Application	Application under development to convert to permanent food truck
97th Street- NEW STORAGE FACILITY- Redtail	Pre-Application	Development plan approval for new storage fac.
Antiqua Stone – Aluminum Products Extrusion	Post Approval	LA installation and drainage improvements now required due to activity.
Benchmark Genetics	Under Reivew	Application to expand shrimp larval production.
Brown Food Truck	Public Hearing	Change to Variance w/ Conditional Use
Buffer Preserve RV Park (fka Aldea)	Post Approval	Site work and clubhouse under construction. Signal payment still due -will hold CO until resolved.
Chuckaree/Singh Mesa Park	Pre-Application	Separate Church from motocross. Carry forward requirements from prior approval. Awaiting RTCI approval.
City Hall	Pre-Application	Minor Amendment for Band Shell and Parking improvements. Under development.
Corrigan Mine	Post Approval	Revise for added site area. Site Construction Plan approval pending IRC ROW Permit.
CR-512 Storage and Maintenance Building	Post Approval	
D & L Foti Administrative Site Plan	Post Approval	Donation of ROW required at request of City.
El Ranchito	Under Review	Legalize unpermitted berry buying use and site variations from prior approval. Pending Applicant Response.
F392 Preserve	Public Hearing	Comp Plan at PH & AA Amendment, Rezoning, Preliminary Development Plan and Preliminary Plat under review.
Fellsmere Feed and Supply	Pre-Application	Application required to legalize expansion.
Fellsmere Fire Station #7	Post Approval	
Fellsmere Fish Camp	Pre-Application	Phased implementatino of retail building and overnight stay cabins
Fellsmere Laundromat	Pre-Application	Site Plan amendment required for rear outdoor stroage and retail.
Florida Gas Transmission	Post Approval	Code enforcement for dead landscaping.
Florida Shrimp Company	HOLD	Reorganization Bankruptcy
FWMA Boat Ramp 1	Post Approval	Code enforcement for dead landscaping.
Hickory/NY Pocket Park	Pre-Application	Directed by Council and part of CDBG paving grant. Application under development.
Javier Lime Street Administrative Approval	Post Approval	No issues
Legacy Landing- Wesley Mills and Assoc.	Under Review	Modified to 250 SF and TH units. Awaiting Applicant resubmittal.
Marian Estates	Public Hearing	AA Amendment, Comp. Plan, Rezoning, Preliminary Development Plan and Preliminary Plat under review.
Meadows Park	Pre-Application	Application under development.
Nailed-it-Roofing	Pre-Application	For lot west of Transfer Station on CR512
North Regional Lake/Train Village	Pre-Application	Application under development.
Operation Hope	Public Hearing	Finishing Final Docs to expnd allowable uses- new phased landscaping plan done/ Complete conditions of appvl.
O'Reilly Auto Parts	Post Approval	
PODS Storage Facility	Public Hearing	Annexation, FLUA, Rezoning and Development Plan under review.
Racetrack	Post Approval	Completed- check landscaping in near future for code compliance
Raceway	Post Approval	Future Code issue w/ existing Landscaping/ Assumption Agreement(s)
Revelation Truth Church International (RTCI)	Public Hearing	To legalize church use. Ready for public Hearings.
RoEd Access	Post Approval	No issues
Serendipity Investments - Overnight accommodations	Pre-Application	Application under development for townhouse and overnight accommodations.
Shaw Fast Food	Pre-Application	New fast food adjacent to Dairy Queen at I95/CR512
Site Plan Modification- CR-512 Laundromat	Pre-Application	Revision required to allow for outdoor stoage and sales.
SLP Tractor Services	Under Review	Retail building w/ assoc. outdoor parking. Awaiting vacation of California Ave. and response from Applicant.
Sonrise	Post Approval	Assumption Agreement required for new owners. Working through landscape and drainage issues.
Taco Mobile	Pre-Application	Owner has changed Scope- applicant to submit building elevations and site plans
TESLA Charging Station 12950 CR512	Post Approval	Construction Permit issued- TESLA Stations are installed- other code issue remain on site
Tractor Supply	Post Approval	No issues.

GRANT	Status as of 4/6/24	STATUS	AMOUNT	LOCAL MATCH	NOTES
CDBG CR - N Broadway Revitalization	Design		\$ 700,000	\$ -	Grant Awarded. M&M design underway.
CDBG DR- New York Ditch Pipes	Construction		\$ 825,000	\$ 150,000	Florida Site Contracting selected for project.
CDBG DRI - 97th / Water Plant	Design		\$ 4,300,000	\$ 50,000	Haley Ward design underway.
CDBG-CV - Broadband Middle Mile	Design		\$ 2,755,000	\$ 150,000	Negotiations with Comcast after RFP response
CDBG-ED - Surf Park	Application		\$ 1,785,000		Hillpointe has purchased land; working with Jordan Grants re CDBG-ED application
CR512 Left Turn Lane	Design				Financed with ARPA funds. Design adjustments/permitting underway
Cultural Facilities - Recreated Train Village	Application		\$ 300,000	\$ 300,000	2022/23 grant not awarded. Reapplied for 2023/24 grant period. ARPA as match.
CW SRF - Sewer to Farm	Application				Kimley Horn submitted application for early 2024 funding
DEO RIF Sewer to Farm	Awarded		\$ 750,000	\$ -	Awarded. See CW SRF for additional grant
FACT Resource Center	Application		\$ 250,000		ARPA grant provided to FACT: design/fundraising. RIF grant applied for to reduce cost.
FDEM HMGP - Watershed Planning Initiative	Design		\$ 75,000	\$ 25,000	Stormwater Master Plan Update underway. Coord. w/ Resilient grant below.
FDEP 259 S. Pine Stormwater Basin	Design		\$ 250,000	\$ -	7/1/24 construction target date. No permitting required.
FDEP Alleyway Grading	Construction		\$ 1,500,000	\$ -	6/1/24 construction target date. No permitting required.
FDEP Microbasins	Design		\$ 1,000,000	\$ -	9/1/24 construction target date. No permitting required.
FDEP Stormwater Greenway	Design		\$ 1,750,000	\$ -	8/1/24 construction target date - Design underway by ISS; obtain adjacent TIF lands
FDEP-GSI - N. Broadway Tree wells	Design		\$ 500,000	\$ 100,000	Amendment to Tree wells/pervious pavers finalized
FEMA Mitigation (road dirt)	Appeal		\$ 1,875,000	\$ 125,000	Appealing FEMA denial of award
FRDAP FY24/25 - Senior League Renovation	Application		\$ 400,000	\$ 200,000	Application submitted 9/14/23. Awards not announced.
Historic - Old School Windows	Design		\$ 400,000	\$ 134,000	Bid opening held. Alternate options being investigated to lower total cost.
HLMP Water Plant Hardening	Construction		\$ 194,000		Boromei Construction selected
HPSC Comm. Center Windows/Doors	Awarded		\$ 144,107	\$ 48,036	Awarded. Grant to commence after Old School Windows.
RAISE CR512 North	Application				Application submitted.
Resilient Florida Alleyways	Construction		\$ 850,000		6/1/24 construction target date. No permitting required.
Resilient Florida Lift Station No. 3	Awarded		\$ 1,500,000	\$ -	Agreement received. Use Natural Gas Generator and City Gas to pay for gate station.
Resilient Florida Stormwater Master Plan	Awarded		\$ 100,000	\$ -	Stormwater Master Plan Update underway. Coord. w/ FDEM HMGP above.
RIF Paving Road 507 to Stick Marsh	Application		\$ 1,500,000	\$ 150,000	Application submitted on 11/6/2023
RTP 22/23 - Preserve	Design		\$ 400,000	\$ 100,000	Design underway by Carter.
SJRWMD - State Street Reservoir	Awarded		\$ 500,000	\$ 100,000	Design underway by MBV. Grant agreement fully executed.
Small Match Nat. District Walking Tour	Construction		\$ 50,000	\$ -	Project to be completed by May 2024
TAP Rail Trail (Broadway to State Park)	Awarded		\$ 1,216,958	\$ 434,977	Design underway. Construction targets 2/1/2025 date.
USDA Comm. Fac. - Yard/Barn/Vacuum	Pre-Application		\$ 250,000	\$ 250,000	Local Match via ARP. Apply early 2024.
USDA Comm. Fac.- ILF Alpha Mower	Application		\$ 139,700	\$ 114,300	Application submitted April 2024
USDA SRF - Sewer to Farm/N Myrtle	On Hold		\$ 2,500,000	\$ 150,000	Local Match via Developers. Application preparation underway - On Hold
USDA Stormwater/Road Paving	Pre-Application		\$ 13,000,000	TBD	Awaiting FEMA road dirt authorization prior to finalizing application.
	TOTAL		\$ 41,759,765	\$ 2,581,313	

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

Meeting Date: April 18, 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 type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> CONSENT AGENDA |
| <input checked="" type="checkbox"/> GENERAL APPROVAL OF ITEM | |
| <input type="checkbox"/> Other: | |

SUBJECT: Code Enforcement. Abatement request for 36 S. Lime

RECOMMENDED MOTION/ACTION: Approve or deny abatement request.

Approved by City Manager *Mark Matha* Date: 4-10-24

Originating Department:	Costs: \$ Funding Source: Acct. #	Attachments: Order Cost Analysis
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.

Summary Explanation/Background: In February 2019, the Special Master ruled in favor of the City regarding violations at 36 S. Lime related to missing backflow preventer, lack of Business Tax Receipt, and failure to maintain the required drainage and landscape system on site. The date of compliance was set at February 20, 2019; however, compliance was not obtained until 4/16/2019. After compliance, the Respondent never paid the fine to close out the case and allow the city to release the lien.

Due to pending sale of another property owned by same owner, this lien came to light by the owner. The owner is asking to abate the fine; yet, provided no supporting documentation for reasoning. Due to the elapsed time, interest has accrued in the amount of \$453.18. Daily fines are \$1,060.00 and the initial fine and costs are \$467.53 for a total due of \$1,980.71. Abatement at different levels are shown below.

- 5% = \$543.19 based on \$467.53 + 5% of \$1513.18
- 10% = \$618.85 based on \$467.53 + 10% of \$1513.18
- 15% = \$694.51 based on \$467.53 + 10% of \$1513.18
- 20% = \$770.17 based on \$467.53 + 10% of \$1513.18
- 25% = \$845.83 based on \$467.53 + 10% of \$1513.18

Civil Penalty	\$125.00
Admin Cost	\$242.53
Additional Other Fees	\$ -
Professional fee	\$100.00
	\$ 467.53

From SM Order
From SM Order
From SM Order and Case Management if bills arrive late after Request for Order is done
From SM Order

4.78%	4/1/2016	6/30/2016	90
4.84%	7/1/2016	9/30/2016	91
4.91%	10/1/2016	12/31/2016	91
4.97%	1/1/2017	3/31/2017	89
5.05%	4/1/2017	6/30/2017	90
5.17%	7/1/2017	9/30/2017	91
5.35%	10/1/2017	12/31/2017	91
5.53%	1/1/2018	3/31/2018	89

always start with date interest begins (See Col. L, Row 45 or so)
Date Range per Interest Quarter and Daily Fine begin/End

Copy from Col. L & M CHANGE FOR SPLIT QUARTERS	DAYS (auto filled) DO NOT CHANGE	Daily Fines	always cell B-11 DO NOT CHANEG auto filled interest (Col. E) DO NOT CHANGE - auot filled
8/25/2015	9/30/2015	- \$ -	\$0.00
10/1/2015	12/29/2015	- \$ -	\$0.00
12/29/2015	12/31/2015	- \$ -	\$0.00
1/1/2016	3/31/2016	- \$ -	\$0.00
4/1/2016	6/30/2016	- \$ -	\$0.00
9/24/2016	9/30/2016	- \$ -	\$0.00
10/1/2016	12/31/2016	- \$ -	\$0.00
1/1/2017	3/31/2017	- \$ -	\$0.00
4/1/2017	6/30/2017	- \$ -	\$0.00
7/1/2017	9/30/2017	- \$ -	\$0.00
10/1/2017	12/31/2017	- \$ -	\$0.00
1/1/2018	3/31/2018	- \$ -	\$0.00
4/1/2018	6/30/2018	- \$ -	\$0.00
7/1/2018	9/30/2018	- \$ -	\$0.00
10/1/2018	12/31/2018	- \$ -	\$0.00
1/1/2019	2/20/2019	- \$ -	\$0.00
2/21/2019	3/31/2019	38 \$ 760.00	\$8.09
4/1/2019	4/16/2019	15 \$ 300.00	\$4.12
4/17/2019	6/30/2019	74 \$ -	\$20.35
7/1/2019	9/30/2019	91 \$ -	\$25.78
10/1/2019	12/31/2019	91 \$ -	\$26.24
1/1/2020	3/31/2020	90 \$ -	\$25.73
4/1/2020	6/30/2020	90 \$ -	\$25.08
7/1/2020	9/30/2020	91 \$ -	\$22.96
10/1/2020	12/31/2020	91 \$ -	\$20.45
1/1/2021	3/31/2021	89 \$ -	\$17.92
4/1/2021	6/30/2021	90 \$ -	\$16.23
7/1/2021	9/30/2021	91 \$ -	\$16.19
10/1/2021	12/31/2021	91 \$ -	\$16.19
1/1/2022	3/31/2022	89 \$ -	\$15.83
4/1/2022	6/30/2022	90 \$ -	\$16.01
7/1/2022	9/30/2022	91 \$ -	\$16.53
10/1/2022	12/31/2022	91 \$ -	\$18.09
1/1/2023	3/31/2023	89 \$ -	\$20.56
4/1/2023	6/30/2023	90 \$ -	\$24.78
7/1/2023	9/30/2023	91	\$29.29
10/1/2023	12/31/2023	91	\$32.52
1/1/2024	3/31/2024	90	\$34.24

Always end on last date of compliance


GRAND TOTAL	Daily Fine Total	Interest Total
\$1,980.71	\$1,060.00	\$453.18

DO NOT MODIFY THIS TABLE

Administrative Fees	\$242.53
Civil Penalty	\$125.00
Professional Fees	\$100.00
Additional Other Fees:	\$0.00
Daily Fines	\$ 1,060.00
Interest	\$ 453.18

Daily Fine	Daily Fine Begins	Date of Physical Compliance	Code References	Read.me
\$ 15.00	2/20/2019	2/20/2019	22-29	compliance with foreclosure on 5/1/19
\$ 20.00	2/20/2019	4/16/2019	78-89	compliance with foreclosure on 5/1/19
\$ 15.00	2/20/2019	2/20/2019	11.4.B	compliance with foreclosure on 5/1/19
\$ -				
\$ -				
\$ -				
\$ -				
From SM Order	From SM Order	From Case Management	From SM Order	Enter at your discretion

Judgement Interest Rates from 7/1/2018 forward can be obtained from <https://www.myfloridacfo.com/Division/AA/LocalGovernments/Current.htm>

CITY OF FELLSMERE CODE ENFORCEMENT 22 SOUTH ORANGE STREET, FELLSMERE, FL 32948 (772) 646-6315	
ORDER OF THE CODE ENFORCEMENT SPECIAL MASTER	
NAME AND ADDRESS OF RESPONDENT: Javier & Melina Zamarripa 232 S. Cypress Street Fellsmere, Florida 32948	CIVIL VIOLATION CASE NO.: 2019-014 CODE SEC.: 22-28,22-29,22-31.(a)(c)(g),22-46,22-47,78-89,1-5, 2-174 and 2-179 LDR SEC.: 11.1,11.4.B,11.4.H.1,17.8.A,17.20.C.7,20.0 and 20.1 ORD.: 2016-08,Policy FLUE A-1.2,CIE A-2.1 RESOLUTION NO.: 06-R Sec. 3 INSPECTOR: Mark Mathes
LOCATION OF VIOLATION: 36 South Lime Street Fellsmere, Florida 32948	APN: 31370000009036000016.0
DATE OF VIOLATION: February 7, 2019	DEADLINE FOR COMPLIANCE: (DATE ON CIVIL VIOLATION NOTICE) February 20, 2019
Based upon the findings of Fact and Conclusions of Law previously made herein:	
() THE VIOLATION HAS BEEN CORRECTED. THE VIOLATOR FAILED TO PAY THE INITIAL CIVIL PENALTY ONLY. AFFIDAVIT FILED BY CODE INSPECTOR. (X) THE VIOLATION HAS NOT BEEN CORRECTED. THE VIOLATOR HAS FAILED TO PAY THE INITIAL CIVIL PENALTY AND/OR CONTINUING CIVIL PENALTIES. AFFIDAVIT FILED BY CODE INSPECTOR.	
IN ACCORDANCE WITH THE ABOVE:	
A. THE SPECIAL MASTER DETERMINES THAT THE SUBJECT CIVIL VIOLATION NOTICE <input checked="" type="checkbox"/> WAS... [] WAS NOT... ISSUED IN ACCORDANCE WITH THE APPLICABLE CODE SECTIONS.	
B. BASED ON THE FOREGOING, THIS SPECIAL MASTER FINDS THE VIOLATOR(S) <input checked="" type="checkbox"/> GUILTY [] NOT GUILTY...OF THE SUBJECT VIOLATION.	
C. THE SPECIAL MASTER ORDERS THE FOLLOWING:	
1. The deadline for compliance on <u>February 20, 2019</u> (X) SHALL NOT () SHALL be extended to (Date) _____. 2. If the violation subject to this action remains uncorrected after the deadline for compliance set forth in "1", an Additional civil penalty in the same amount specified in this Order shall accrue for each day following the deadline for compliance and shall continue to run until the violation is corrected. 3. If you wish to appeal the Special Master's decision, you must do so as provided in the Code of Ordinances no later than 30 days from the date the Special Master's decision was rendered. 4. Pursuant to Code Section 2-174, Respondent(s) shall pay the Clerk a Civil Penalty of \$ <u>125.00</u> pursuant to the Civil Violation Notice; a Continuing fine of \$ <u>60.00</u> per day for each day the violation is not corrected; Administrative costs in the sum of \$ <u>342.53</u> , which are itemized as follows: \$ <u>150.00</u> for hearing costs, \$ <u>12.53</u> for mailing and copy costs, \$ <u>80.00</u> for lien filing fees and \$ <u>100.00</u> for Professional Fees for Code Enforcement Office, Attorney, Building Official, City Engineer and City Employees costs. 5. If the full amount of \$ <u>467.53</u> remains unpaid after <u>4/19/2019</u> , a certified copy of this Order may be recorded in the Public Records of Indian River County which shall constitute a lien against the Respondent(s)' property, both real and personal. The City of Fellsmere may foreclose on any such lien, which remains unpaid after three (3) months from the date the lien is filed and/or sue for a money judgment.	
 SPECIAL MASTER'S SIGNATURE	3/19/2019 DATE OF DECISION

Page 1 of 2
 3120210029383
 RECORDED IN THE PUBLIC RECORDS OF
 JEFFREY R SMITH, CLERK OF COURT
 INDIAN RIVER COUNTY FL
 BK: 3414 PG: 1186 Page 1 of 4 4/26/2021 2:13 PM



Order of the Code Enforcement Special Master
Case No. 2019-014
Respondents: Javier & Melina Zamarripa

1. Legal Description of property where violation occurred:

Town of Fellsmere, BLK 36, Lots 16, 17 & 18, PB 2, Pages 3 & 4, Address Being 36 S. Lime St.,
Fellsmere, Florida

2. The orders set forth herein are made under the City of Fellsmere Code of Ordinances,
including without limitation the following provisions: _____

*In addition to Paragraph "C" on
Page One of this Order, respondents are
required to comply with all the provisions
contained in the Request for Order.*

Dated:

March 13, 2019

Paul LeBanks
Code Enforcement Special Master

3/19/2019

**CITY OF FELLSMERE, FLORIDA
CODE ENFORCEMENT**

RESPONDENT: <u>Javier & Melina Zamarripa</u>	SPECIAL MASTER FINDINGS OF FACTS AND CONCLUSIONS OF LAW	HEARING DATE: February 27, 2019 Case No. 2019-014
-----------------------------------------------------	------------------------------------------------------------	-------------------------------------------------------------

I. THE FOLLOWING ARE APPLICABLE TO THIS HEARING:

- RESPONDENT(S) PRESENT RESPONDENTS AGENT PRESENT NO SHOW
 VIOLATION DISMISSED FAILURE TO PAY CIVIL PENALTY REPEAT VIOLATION
 CONTINUING VIOLATION SCHEDULED HEARING CONTINUED TO _____
 RESPONDENT'S NON-COMPLIANCE: 22-28, 22-29, 2-174 (FCO) 4.B, 11(LDR)
 DECISION DEFERRED (reason) _____

II. THE FOLLOWING DEMONSTRATIVE EVIDENCE WAS OFFERED: Indicate City ("C") or Respondent ("R")

- AFFIDAVIT OF PROOF CIVIL VIOLATION NOTICE FIELD REPORTS
 COURTESY WARNING PROOF OF SERVICE CORRESPONDENCE
 PHOTOGRAPH(S) AFFIDAVIT OF SERVICE INVOICES
 PROOF OF OWNERSHIP (REAL AND/OR PERSONAL PROPERTY) PLANS
 MAP(S) BUILDING AND/OR AERIAL PHOTO(S)
 OTHER _____

III. SUMMARY OF EVIDENCE PRESENTED:

- A. BY CITY: VIOLATION WAS ISSUED IN ACCORDANCE WITH PENALTY AND COMPLIANCE REQUIREMENTS PROVISIONS OF THE CODE OF ORDINANCES. NOTICE WAS GIVEN BY
 HAND DELIVERY CERTIFIED MAIL POSTING AND REGULAR MAIL OTHER _____
 B. BY RESPONDENT(S): TESTIMONY OTHER _____

IV. BASIC AND UNDERLYING FACTS/FUNDEMENTAL ISSUE: CITY IS IS NOT CORRECT IN ITS ASSESSMENT OF THE ALLEGED VIOLATION (further explanation, if any) _____

YES NO THE CITY ESTABLISHED BY A PREPONDERANCE OF EVIDENCE THAT RESPONDENT(S) IS/ARE RESPONSIBLE FOR THE VIOLATION AS ALLEGED.

V. ULTIMATE FINDINGS:

- A. IT IS THE DETERMINATION OF THE SPECIAL MASTER THAT THE CIVIL VIOLATION NOTICE WAS WAS NOT ISSUED IN ACCORDANCE WITH THE CODE OF ORDINANCES.
 B. BASED ON THE FOREGOING, THIS SPECIAL MASTER FINDS RESPONDENT(S) GUILTY NOT GUILTY OF THE SUBJECT VIOLATION.

COPY MAILED TO RESPONDENT(S)/AGENT ON: 3/14/2019

DATED: March 12, 2019 
Signature of Special Master

AFFIDAVIT OF PROOF AND REQUEST FOR ORDER

Respondent(s)
Javier & Melina Zamarripa
232 S. Cypress Street
Fellsmere, FL 32948

Appraiser's Parcel No.: 3137000009036000016.0

Case No. 2019-014 Date of Hearing February 27, 2019

AFFIDAVIT OF PROOF AND REQUEST FOR ORDER

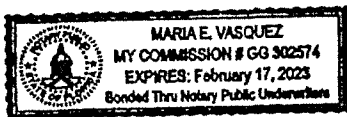
County of Indian River)
State of Florida)

The undersigned, being first duly sworn, declares under penalty of perjury that the following is true and correct:

- 1. I am a duly appointed a Code Enforcement Inspector/Officer for the City of Fellsmere.
2. A duly executed Affidavit re Proof of Service of Civil Violation Notice, including copies of the Civil Violation Notice and reciting facts constituting due service of the Civil Violation Notice hereunder, has been filed in these proceedings for the following violation:
Code of Ordinance Sections: 22-28,22-29,22-31.(a)(c)(g),22-46,22-47,78-89,1-5, 2-174 and 2-179.
Land Development Code Sections: 11.1,11.4.B,11.4.H.1,17.8.A,17.20.C.7,20.0 and 20.1.
Ordinance No.: 2016-08, Policy FLUE A-1.2, CIE A-2.1
Resolution No.: 06-R, Sec. 3
3. The alleged violator has failed to [check the appropriate box]
(X) correct the violation(s) set forth in the Civil Violation Notice.
() (other documentation)
(X) pay the initial and/or continuing civil penalties.

Mark Mathes
Code Enforcement Officer/Inspector

SWORN TO AND SUBSCRIBED before me this 27 day of February, 2019 by Mark D. Mathes, who is personally known to me or produced as identification.



Maria E. Vasquez
Notary Public /My Commission Expires: 2-17-2023
My Commission Number is: 66 302574

REQUEST FOR ORDER

Based on the Affidavit of Proof the City of Fellsmere requests an Order from the Special Master as follows:

- (X) Civil Penalty of \$125.00 pursuant to the Civil Violation Notice
(X) Continuing fine of \$15.00 per day for each day violation Sec. 22-29 is not corrected after February 20, 2019
(X) Continuing fine of \$30.00 per day for each day violation Sec. 78-89 is not corrected after February 20, 2019
(X) Continuing fine of \$15.00 per day for each day violation Sec 11.4.B is not corrected after February 20, 2019
(X) Administrative costs in the sum of \$242.53, which are itemized as follows: \$12.53, for mailing and copy costs; \$150.00 (estimate), for hearing costs; and \$80.00, for lien filing fees.
(X) That the violator will be required to take the following steps to correct the violation: (1) pay civil penalty and administrative costs in the amount of \$367.53; (2) pay a continuing fine, as applicable; (3) install a backflow prevention device on the water line meeting the City of Fellsmere standards, (4) submit a landscape plan compliant with the Land Development Code and install such landscaping upon approval by the City, (5) regrade the drainage swales on each side of the parking area and re-sod all disturbed areas and (6) obtain a Business Tax Receipt for commercial rentals.

Total of \$367.53, plus continuing fines, to be filed as a lien on the Alleged Violator's property.

Executed on February 26, 2019 at Fellsmere, Florida.

Mark Mathes
Code Enforcement Officer/Inspector

CITY OF FELLSMERE CODE ENFORCEMENT

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

Meeting Date: April 18, 2024

Agenda Item No. 13(b)

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

SUBJECT: Post Occupancy Agreement for Moss Property

RECOMMENDED MOTION/ACTION: Approve Post Occupancy Agreement for Moss Property to allow time to move

Approved by City Manager Mark Mathes **Date:** 04/12/24

Originating Department:	Costs: Funding Source: Acct. #	Attachments: Post Occupancy Agreement
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 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:

Staff failed to inform the City Attorney of the need for temporary possession of the Moss Property by the Moss family after the closing of the sale to the City to allow time for the Moss family to move. This agreement should have been executed at time of closing. The Moss Family has asked for two weeks to move. The City closed on the Moss Property on April 11th. The closing on their replacement housing is occurring on April 18th leaving them around one week left from this Post Occupancy Agreement to move. No rent is being charged for this two week possession.

POST CLOSING OCCUPANCY AGREEMENT

THIS POST CLOSING OCCUPANCY AGREEMENT, made and entered into this ____ day of April, 2024, to be effective as of the Closing Date, by and between, Roger L. Moss and Roger Hubert Moss, (hereinafter referred to as "Seller"), and City of Fellsmere, Florida, a municipal corporation created pursuant to the laws of the State of Florida, (hereinafter referred to as "Buyer").

WITNESSETH

WHEREAS, Seller and Buyer entered into an "As-Is" Residential Contract for Sale and Purchase of the following described property:

The North 192.03 feet of the West 453.68 feet of the East 540.50 feet of Tract 1540, of Fellsmere Farm Company, in Township 31 South, Range 37 South, according to the plat thereof as recorded in Plat Book 2, Page(s) 1 and 2, Public Records of St. Lucie County, Florida; said lands now lying and being in Indian River County, Florida.

LESS AND EXCEPTING, the North 116 feet of the West 97.00 feet of the East 510.50 feet of said Tract 1540.

Subject to an easement for ingress and egress across the North 25 feet thereof. TOGETHER WITH and subject to an easement in common for ingress and egress of grantors and grantees and Gilbert E. Smith and Mary E. Smith, his wife, and other adjacent ownerships bordering the South side of said easement, and which ownerships derive their title from or through Gilbert E. Smith and Mary E. Smith, his wife; said easement is located over and across the North 25 feet of the above described property and other land now owned by Gilbert B. Smith and Mary E. Smith, his wife and extending West to the East city limits of the City of Fellsmere, said 25 feet lying South of and adjacent to Ditch 14.

WHEREAS, Seller had requested occupancy of the above described real property (hereinafter referred to as the "Property") after April 11, 2024 (the date of closing) through April 27, 2024; and

WHEREAS, the Buyer has agreed to such occupancy commencing on April 11, 2024 (the date of closing) through April 27, 2024.

NOW, THEREFORE, for and in consideration of the sum of \$10.00, the sale and purchase price of the Property and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are true, correct and incorporated herein.
2. The Seller is selling and the Buyer is buying the Property described above, pursuant to an "As-Is" Residential Contract for Sale and Purchase, having an effective date of March 13, 2024.
3. The parties agree that the Seller may remain in possession of the Property until April 27, 2024 and that Seller may vacate the Property at any time prior to April 27, 2024 at Seller's sole

discretion. There will be no rental charge to Seller for the time Seller is in possession of the Property.

4. The Seller shall vacate the Property by 5:00 p.m. on or before April 27, 2024 and leave it in a broom cleaned condition.
5. During the Seller's occupancy of the Property, Seller agrees to pay for: (a) utilities for the use of the Property and (b) all damages caused to the Property by Seller.
6. Seller agrees not to lease, sub-lease or rent the Property to anyone or to grant to anyone any right to use, possess, enjoy or occupy the Property.
7. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
8. **INDEMNIFICATION AND INSURANCE.** Seller assumes all risk of and responsibility and liability for all losses, including but not limited to personal property, damages, and personal injuries which may be incurred by Seller or any other persons during Seller's use and occupancy of the Property, regardless of whether they are caused by Seller's use and occupancy of the Property. Seller expressly and unequivocally releases Buyer from and agrees to indemnify and save Buyer harmless from all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorneys fees, arising out of, connected with or resulting, directly or indirectly, from or during Seller's use and occupancy of the Property whether known or unknown, foreseen or unforeseen; to defend, at Seller's own cost and expense, all suits which may be brought against Buyer, either alone or in conjunction with others, upon any such liabilities or claims; and to promptly satisfy, pay and discharge all judgments and fines that may be recovered against Buyer in all such actions. Seller agrees to, at all times, at its expense, carry comprehensive general liability insurance in the amount of not less than one million dollars (\$1,000,000). A certification of insurance naming the Buyer as an additional insured and indicating that such policy is in full force and effect will be supplied to the Buyer.
9. **SOVEREIGN IMMUNITY.** Nothing contained in this Agreement shall be construed as a waiver or attempted waiver of immunity from or limitation of, liability the Buyer (City of Fellsmere) 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 Buyer for liability for torts as provided for in Section 768.28 Florida Statutes, the Buyer 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 Buyer to be sued by third parties in any matter whether arising out of this Agreement or anything else whatsoever.
10. This Agreement may be executed in one or more counterparts, each of which shall be deemed

an original, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one such counterpart. A facsimile machine and/or electronic mail to transport a signed copy of this Agreement shall be acceptable and the signatures thereon shall be considered as original signatures for purposes of enforcing this Agreement.

SELLER UNDERSTANDS THAT WARREN W. DILL OF DILL, EVANS & RHODEBACK IS A LICENSED ATTORNEY IN THE STATE OF FLORIDA AND THAT HE IS REPRESENTING THE BUYER AND NOT THE SELLER IN THIS TRANSACTION. SELLER IS ADVISED THAT THIS IS A LEGALLY BINDING CONTRACT AND THAT SELLER SHOULD SEEK LEGAL COUNSEL TO REPRESENT BUYER.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

WITNESSES
AS TO ALL:

(Sign): _____

(Print Name): _____

(Address): _____

WITNESSES:

(Sign): _____

(Print Name): _____

(Address): _____

SELLER:

Roger L. Moss

Roger Hubert Moss

BUYER:

City of Fellsmere, Florida

By: _____
Joel Tyson, Mayor

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

Meeting Date: April 18, 2024

Agenda Item No. 13(c)

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

SUBJECT: Lease Agreement for Cell Tower at Cemetery

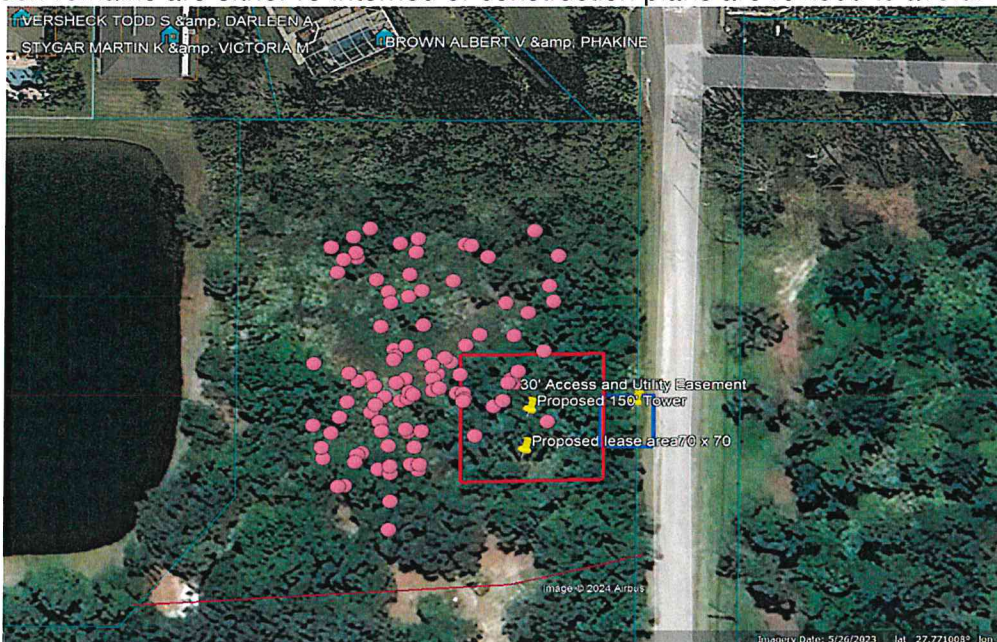
RECOMMENDED MOTION/ACTION: Approve Lease Agreement and authorize Mayor to execute lease.

Approved by City Manager *Mauro Motta* **Date:** 4-9-24

Originating Department:	Costs: Funding Source: Acct. #	Attachments: Lease Agreement
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:

At the October 19, 2023 Council meeting, the City Council approved terms for the lease of land at the cemetery for a cell tower but deferred approval subject to investigation by the Lessor of human remains. A slightly revised location has minimized the underground anomalies. Prior to Lessor doing underground probes, they have asked for the lease to be executed. If Council is willing to move forward, Staff would recommend an additional lease term be inserted requiring all construction to halt upon discovery of any remains until such remains are either re-interred or construction plans are revised to avoid.



Lease revised to require \$10,000 due diligence payment and payment of legal fees capped at current amount of \$4,112.50.

**LEASE AND ACCESS LICENSE AGREEMENT
BETWEEN THE CITY OF FELLSMERE
AND VERTICAL BRIDGE VBTS, LLC**

THIS LEASE AND ACCESS LICENSE AGREEMENT (the "Agreement") is made and entered into by and between the **City of Fellsmere, Florida**, a municipal corporation created under the laws of the State of Florida with a mailing address of 22 South Orange Street, Fellsmere, Florida 32948 (the "City") and **Vertical Bridge VBTS, LLC**, a Delaware limited liability company ("Lessee"), whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 (the "Lessee") and is effective as of the date of the last signature set forth below (the "Effective Date"). The City or Lessee may also be referred to herein as a "Party" or collectively as the "Parties."

WITNESSETH

WHEREAS, City is the owner of certain real property located in the City of Fellsmere, Indian River County, Florida, consisting of approximately 6,400 square feet, which is more particularly described in Exhibit "A" attached hereto (the "**Property**"); and

WHEREAS, City desires to lease to Lessee, and Lessee desires to lease from City a certain portion of the Property, which is more particularly described in Exhibit "B" attached hereto (the "**Leased Premises**"), for purposes of constructing, maintaining, and operating a communications and tower facility (the "**Tower Facility**"); and

WHEREAS, to access the Leased Premises, City desires to grant to Lessee, and Lessee desires to receive from City, an appurtenant non-exclusive license for ingress and egress, on foot or motor vehicle, including trucks, and for installation, removing, replacing, modifying, maintaining and operating a Tower Facility, including, if applicable, underground utility wires, antenna equipment, cable wiring, back-up power sources, conduit, pipes, related fixtures and an antenna structure, over, across, and/or under a certain portion of the Property, which is more particularly described in Exhibit "C" attached hereto (the "**Access License**"); and

WHEREAS, City Council deems it to be in the best interests of the City to lease the Leased Premises to Lessee together with the Access License under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter described, the parties agree as follows:

ARTICLE I

RECITALS

- 1.1 The above recitals are true and correct and incorporated herein by this reference.

ARTICLE II

LEASED PREMISES; ACCESS LICENSE

2.1 **Option to Lease.** As of the Effective Date, the City grants to Lessee the exclusive option to lease the Leased Premises (the “**Option**”) during the Option Period (defined below). At any time during the Option Period and Term (defined below), Lessee and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Property (collectively, the “**Tests**”), to apply for and obtain licenses, permits, or approvals, or other relief required of or deemed necessary or appropriate at Lessee’s sole discretion for its use of the Leased Premises including, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, construction permits and any other permits and approvals (collectively, the “**Government Approvals**”), initiate the ordering and/or scheduling of necessary utilities, obtain a title report with respect to the Property, and otherwise to do those things on the Property that are necessary to determine the physical condition of the Property, the environmental history of the Property, and the feasibility or suitability of the Property for Lessee’s permitted use under this Agreement, all at Lessee’s expense. Nothing herein shall be construed to guarantee Governmental Approvals for any such applications. Lessee shall be authorized to apply for the Government Approvals on behalf of the City and the City agrees to reasonably cooperate with such applications. Lessee will not be liable to the City on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Lessee’s Tests unless such pre-existing condition is discovered by Lessee as a result of the Tests and despite such discovery, Lessee exercises the Option and commences construction of the Tower Facility. Lessee will restore the Property to its condition as it existed prior to conducting any Tests, reasonable wear and tear and casualty not caused by Lessee excepted. In addition, Lessee shall indemnify, defend and hold the City harmless from and against any and all injury, loss, damage or claims arising directly out of Lessee’s Tests.

- 2.1.1 In consideration of The City granting Lessee the Option, Lessee agrees to pay the City the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days of the full execution of this Agreement. The Option Period will be for an initial term of one (1) year from the Effective Date (the “**Initial Option Period**”) and may be renewed by Lessee for one (1) additional year (the “**Renewal Option Period**”) upon written notification to the City and the payment of an additional Five Thousand Dollars (\$5,000.00) prior to the expiration date of the Initial Option Period. Option payments are non-refundable and non-creditable to other payment obligations due under this Agreement. Unless utilized independently, the Initial Option Period and any Renewal Option Period shall be referred to collectively as the “**Option Period.**”
- 2.1.2 Lessee may exercise the Option at any time during the Option Period by delivery of written notice to the City (the “**Notice of Exercise of Option**”). The Notice of Exercise of Option shall set forth the commencement date (the “**Commencement Date**”), which shall be no later than two years after the Effective Date, of the Initial Term (defined below), If Lessee does not provide a Notice of Exercise of Option during the Option Period, this Agreement will terminate, and the parties will have no further liability to each other.
- 2.1.3 During the Option Period or the Term, unless required by law, the City shall not take any action to change the zoning status or land use of the Property which would diminish, impair, or adversely affect the use of the Premises by Lessee for its permitted uses hereunder.

2.2 Upon the Commencement Date, the City does hereby lease the Leased Premises together with the grant of the Access License to Lessee for purposes of constructing, maintaining, and operating a Tower Facility. Lessee shall have access to the Leased Premises and the Access License seven (7) days a week, twenty-four (24) hours a day. Notwithstanding the foregoing, for security purposes, access to the Leased Premises and Access License is subject to the following procedures: Lessee must call _____ at _____ (daytime primary telephone number) or _____ (after-hours primary telephone number); or in the event _____ cannot be reached, _____ at _____ (daytime secondary telephone number), or _____ (after-hours secondary telephone number), at which time one of the aforementioned City representatives will make arrangements for Lessee to access the Leased Premises and/or Access License as soon as is reasonably possible, but in no event later than 24 hours after Lessee contacted City by telephone. City will notify Lessee in writing of any change in the foregoing telephone numbers. City hereby agrees that one of the aforementioned City representatives or his/her designee will be on-call seven (7) days a week, twenty-four (24) hours a day, in order to provide Lessee access to the Leased Premises and/or Access License. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Lessee or persons under their direct supervision will be permitted to enter the Leased Premises.

ARTICLE III

LESSEE'S REPRESENTATION AND WARRANTIES

3.1 Lessee represents and warrants that it has the full and unencumbered right, power and authority to enter into this Agreement and has, or will have the unencumbered right, power and authority to perform any acts contemplated herein.

ARTICLE IV

LESSEE'S COVENANT

4.1 Lessee covenants and agrees that:

4.1.1 Lessee shall use the Leased Premises for the purposes of constructing, maintaining and operating a Tower Facility as well as leasing or granting licenses without the City's consent to use all or part of the Tower Facility, and uses incidental thereto, to meet Lessee's telecommunications needs and all necessary connecting appurtenances. In the event Lessee leases or grants a license to any third-party to use all or part of the Tower Facility to install antennas and/or equipment, Lessee shall provide at least sixty (60) days written notice to the City prior to the installation of such antennas and/or equipment providing: (a) the name of the sublessee, subtenant or licensee, (b) a description of the antennas and/or equipment to be installed, and (c) the location on the Tower Facility where such antennas and/or equipment will be installed. Lessee shall not cause or permit the installation of any antennas and/or equipment at the Tower Facility without first providing proof to the City that all permits from the applicable governmental agencies to install such antennas and/or equipment have been obtained or are unnecessary. Lessee may only construct or modify the Tower

Facility in accordance with a site plan, or a modified site plan as the case may be, approved by the City.

- 4.1.2 Lessee shall be responsible for soil borings, surveys, radio coverage tests and any other similar tests which may be required as a condition of construction of the Tower Facility and for all expenses related to the Tower Facility.
- 4.1.3 Lessee shall maintain the Leased Premises in a clean, orderly condition and meet all governmental requirements imposed by all federal, state or local agencies, including all provisions relating to landscape maintenance.
- 4.1.4 Lessee shall be solely liable for electricity expenses relating to the Tower Facility and uses incidental thereto. Lessee's electrical service shall be separately metered, and Lessee shall be responsible for all costs associated with metering, including the cost of installing any meter.
- 4.1.5 Lessee shall submit all required applications for permits to the applicable governmental agencies, including, but not limited to, the City and/or Indian River County for review, approval and required fees.
- 4.1.6 Lessee shall be responsible for making any necessary returns for and paying any and all ad valorem and non-ad valorem taxes separately levied or assessed against its improvements on the Leased Premises and/or Access License.
- 4.1.7 Lessee shall remove its personal property, fixtures and the Tower Facility within ninety (90) days of the termination of this Agreement and shall return the Leased Premises and Access License to the City to grade, in its original condition; provided, however, that Lessee shall leave, at City's option, if applicable, the foundation, security fence, and Tower Facility to become the property of City. The City must make a written demand to leave such property within sixty (60) days of sending or receiving notice of the termination of this Agreement otherwise Lessee shall have no obligation to leave such property. If such time for removal causes Lessee to remain on the Leased Premises after termination of this Agreement, Lessee shall pay rent at double the then existing annual rate or on the existing month's prorated basis, until such time as the removal of personal property and fixtures are completed.
- 4.1.8 Lessee shall keep the Leased Premises and Access License free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Lessee. Lessee shall, within twenty (20) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond. No work which City permits Lessee to perform on the Leased Premises and/or Access License shall be deemed to be for the use and benefit of the City so that no mechanics or other lien shall be allowed against the City by reason of its consent to such work. City shall have the right to post notices and/or

record a Memorandum of Lease in the Public Records that it is not responsible for payment for any such work.

- 4.1.9 If Lessee elects to terminate this Agreement for convenience in accordance with Section 10.3 of this Agreement, Lessee shall provide to City as liquidated damages no later than thirty (30) calendar days after the Termination Date, a lump sum equal to the amount of six (6) month's rental payments from the date of termination. Failure to timely pay said liquidated damages shall subject Lessee to a late fee of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum.

ARTICLE V

CITY'S REPRESENTATIONS AND WARRANTIES

- 5.1 Lessee represents and warrants that:
 - 5.1.1 City has good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement.
 - 5.1.2 There are no other liens, judgments or impediments of title on the Leased Premises and/or Access License that will interfere with Lessee's ability to lease the Leased Premises and use the Access License for the purposes contemplated in this Agreement.
 - 5.1.3 Lessee will have the first priority right to install its antennas and operate the Tower Facility contemplated in this Agreement.

ARTICLE VI

CITY'S COVENANTS

- 6.1 City covenants and agrees that:
 - 6.1.1 City shall cooperate with Lessee in its effort to obtain certificates, permits and other approvals that may be required by any federal, state or county authorities. City shall grant Lessee the right to survey the Property, Leased Premises, and/or Access License in order to meet requirements to submit the applications for permits.
 - 6.1.2 From time to time, City may approve other entities to operate communications facilities at or on the Tower Facility and/or the right to install antennas in connection with the operation of such facilities or other communications facilities; provided, however, that (i) City shall not allow the operation of such facilities and antennas by other lessees to interfere with the operation of Lessee or any of Lessee's subtenant's or licensee's antennas and equipment as it exists at the time of such other lessee's installation or as it may be modified at any time during the term of this Agreement, as the same may be extended, (ii) the placement of such other facilities and antennas shall be at a location on the

Tower Facility approved by Lessee, and (iii) such other entity shall pay Lessee a reasonable monthly recurring rent or license fee for the placement of such antennas and facilities for a term commensurate with other antennas and facilities located at or on the Tower Facility. If any such interference occurs, City agrees to eliminate or attempt to cause the elimination of such interference with Lessee or any of Lessee's subtenant's or licensee's operations within a reasonable time after receipt of Lessee's notice of such interference and, if necessary, to cause the interfering party to cease its operations. If such interference continues for more than thirty (30) consecutive days after Lessee's notice to City with respect to such interference, then Lessee shall have the right to immediately cause such other entity to remove its antennas and equipment from the Tower Facility. The City hereby also agrees that the Lessee has no obligation or requirements to upgrade or modify the Tower Facility to facilitate its use for other entities which the City may authorize. Any or all costs associated therewith, shall be borne by parties other than the Lessee.

- 6.1.3 Should the City at any time during the term of this Agreement, or any renewals or extensions thereof, decide to sell all or part of the Property (other than the Leased Premises) to a purchaser other than Lessee, such sale shall be under and subject to this Agreement and Lessee's rights hereunder, and any sale by the City of the portion of p
- 6.1.4 Property underlying the Access License herein granted shall be under and subject to the right of the Lessee in and to the use of such right-of-way. With respect to any partial sale of the Property, the resulting parcels from such partial sale are required to afford Lessee the protections set forth in this Section 6.1. Notwithstanding anything to the contrary contained here, to the extent not prohibited by law, the City may only assign this Agreement in its entirety and only to any person or entity who or which acquires fee title to the Property
- 6.1.5 The City shall not cause or permit the construction of communications or broadcast towers or structures, fiber optic backhaul facilities, or satellite facilities on the Property except for the Tower Facility constructed by Lessee. The City and Lessee intend by this Agreement for Lessee (and persons deriving rights by, through, or under Lessee) to be the sole parties to market, use, or sublease any portion of the Property for a Tower Facility during the term. The City agrees that this restriction on the use of the Property is commercially reasonable, not an undue burden on the City, not injurious to the public interest, and shall be specifically enforceable by Lessee (and persons deriving rights by, through or under Lessee) in a court of competent jurisdiction. The foregoing restriction shall run with the land and be binding on the successors and assigns of the City.

ARTICLE VII
ACKNOWLEDGEMENTS

- 7.1 City and Lessee acknowledge and agree that:
- 7.1.1 Prior to the submittal of the application for the required building permit(s), Lessee's ability to construct, maintain, and operate the Tower Facility on the Leased Premises is contingent upon Lessee obtaining, after the execution of this Agreement, all the certificates, permits and other approvals that are required by any federal, state, governmental agencies, including but not limited to the City and/or Indian River County, or other local agencies. In the event that any such certificate, permit or approval issued to Lessee is canceled, expires, lapses or is otherwise withdrawn or terminated by a governmental authority so that Lessee is unable to use the Leased Premises for its intended purposes, Lessee shall have the right to terminate this Agreement pursuant to Article X of this Agreement.
 - 7.1.2 Prior to the submittal of the application for the required building permit(s), Lessee shall have the right to perform or caused to be performed, at its sole expense, and shall have completed an assessment of the Leased Premises and the adjacent areas in order to determine whether such are contaminated by hazardous substances or pollutants. If the assessment reveals the presence of hazardous substances or pollutants beyond levels acceptable to the Lessee under applicable environmental laws, Lessee shall have the right to terminate this Agreement pursuant to Article X of this Agreement.
 - 7.1.3 Lessee may, at its expense, make such improvements on the Leased Premises as it deems necessary from time to time for the operation of the Tower Facility for wireless voice and data communications. Upon request, City agrees to waive or subordinate any lien rights it has regarding Lessee's property if such lien rights did not arise from a default by Lessee under this Lease, in order to facilitate Lessee's financing of said improvements or their respective equipment and will execute such documents as may be reasonably necessary to do so .
 - 7.1.4 If because of Lessee's operations on the Leased Premises any laws or regulations of the Federal Aviation Administration, Federal Communications Commission or any other relevant governmental agency or body require or recommend that Lessee's antennas and/or all or a portion of the Tower Facility be lit and/or marked, Lessee may install and maintain such lighting and markings. In no event, however, shall Lessee be liable for the installation or maintenance of any lighting or markings required by the operations of City or any other lessee in or on the Tower Facility.
 - 7.1.5 Lessee shall have the first priority right to install or have its subtenants and licensees install their antennas and operate their communications facilities at the

Tower Facility, without Landlord's consent, provided such communications facilities are consistent with installations on similar Tower Facilities.

- 7.1.6 Subject to Section 6.1.2, City shall have the right to install or have installed other antennas for government or private usage.

ARTICLE VIII

LEASE TERM

8.1 The term of this Agreement shall be for an initial term of five (5) years (the "**Initial Term**") with five additional five (5) year automatic renewal periods, unless Lessee delivers notice to the City, not less than thirty (30) days prior to the end of the then-current initial term or renewal term, as applicable, of Lessee's intent not to renew.

ARTICLE IX

CONSIDERATION

9.1 Beginning on the first (1st) day of the second (2nd) month after the Commencement Date ("**Rent Commencement Date**"), Lessee shall pay in advance to the City a monthly rent payment of Two Thousand Three Hundred Dollars (\$2,300.00) ("**Rent**") at the address set forth in Section 14.6 below on or before the fifth (5th) day of each calendar month. The initial payment of Rent will be forwarded by Lessee to the City within thirty (30) days after the Rent Commencement Date.

9.2 Beginning with the second (2nd) Tower User (as hereinafter defined), Lessee agrees to pay the City twenty five percent (25%) of the second (2nd) and each subsequent additional Tower User's monthly sublease or license fee ("**Sublease Fee**") as additional Rent (individually, or together if applicable, a "**Revenue Share Fee**"), subject to the following terms and conditions. The applicable Revenue Share Fee shall commence on the first day of the month following the date that such additional Tower User(s) commences payments to Lessee of such carrier's Sublease Fee under its respective sublease(s). The Revenue Share Fee shall only be due and payable in the event there are two (2) or more Tower Users. If at any time after the addition of a second (2nd) Tower User the number of Tower Users is reduced to one (1) Tower User, then no Revenue Share Fee shall be due and payable. Notwithstanding anything to the contrary contained herein, the Revenue Share Fee shall only be due and payable by Lessee to the City hereunder during the term of such Tower Users' sublease agreements for so long as such Tower Users are actually paying Lessee the requisite Sublease Fee set forth therein. For purposes of this Agreement, Sublease Fee shall be all rent or other consideration collected from any sublease that Lessee enters into with any subtenant or licensee including amendments and renewals thereof but excluding: (i) any reimbursements or pass-throughs from such subleases or licenses to Lessee for charges including but not limited to utility charges, taxes, or other pass-through expenses or (ii) any fees from subleasees or licenses to Lessee for services performed on behalf of such subleasees or licensees including but not limited to site acquisition, due diligence, design and engineering work, construction, site inspections, radio frequency monitoring and testing, repairs, and zoning and permitting. For purposes herein, the term "**Tower User**" shall mean any person or entity utilizing the Tower Facility for purposes of mounting electronic communication equipment and antennae, including, but not limited to, national

broadband carriers, such as, Verizon, AT&T, Dish, and T-Mobile, regional broadband carriers, wireless carriers, mobile service providers, and cable and satellite service providers.

9.3 Lessee shall pay any personal or increase in real property taxes assessed on, or any portion of such taxes attributable to, the Tower Facility located on the Leased Premises including Florida state sales tax, ad valorem and non-ad valorem taxes assessed against Lessee's property, utility charges, cost of maintenance, and all other charges and expenses whatsoever associated with the Lessee's use of the Leased Premises and Access License. Lessee acknowledges that the Property and the Leased Premises are presently exempt from ad valorem taxation. Therefore, Lessee shall pay as additional rent any increase in real property taxes levied against the Leased Premises, which are directly attributable to Lessee's use of the Premises (but not, however, taxes attributable to periods prior to the Effective Date such as roll-back or greenbelt assessments).

9.4 In addition to any other consideration set forth herein, Lessee shall pay the City a one-time payment of Thirty Thousand Dollars (\$30,000) within thirty (30) days of the date Lessee is issued a building permit for or commences construction of the Tower Facility, whichever occurs first.

9.5 Lessee agrees to pay Lessor, within thirty (30) days of full execution of this Agreement, a one-time payment of up to Four Thousand One Hundred Twelve Dollars and Fifty Cents (\$4,112.50) to assist Lessor with Lessor's legal fees incurred with respect to the review and approval of this Agreement provided Lessor delivers this Agreement, properly executed and notarized, together with written documentation of Lessor's attorney fees, to Lessee on or before thirty (30) days of Lessor's receipt of this Agreement.

ARTICLE X

TERMINATION

10.1 This Agreement may be terminated in whole or in part in writing by either Party in the event of default by the other to fulfill its obligations under this Agreement or any other agreement contemplated by this Agreement through no fault of the terminating Party, provided that no termination may be effected unless the other Party is given: (1) not less than forty-five (45) calendar days' written notice of intent to terminate; and (2) the default is not cured within the forty-five (45) day period. In the event the City elects to terminate this Agreement due to a default by Lessee (which remains uncured by Lender), the City shall continue to honor all sublease and license commitments made by Lessee through the expiration of the term of any such commitment and shall be entitled to collect and retain the rents or license fees associated with such subleases or license commitments, it being intended hereby that each such commitment shall survive the early termination of this Agreement.

10.2 This Agreement may be terminated, in whole or in part, in writing, by the Lessee for convenience, provided that the City is afforded not less than one (1) year written notice.

10.3 If the Leased Premises or the Tower Facility is damaged, destroyed, condemned, or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement by giving notice

to the City no more than forty-five (45) days following the date of such damage, destruction, condemnation, or transfer in lieu of condemnation.

10.4 In the event of termination of this Agreement by Lessee, all rental payments paid to City prior to said termination date shall be retained by the City. Notwithstanding the foregoing, if such termination by Lessee is due to a default on the part of the City of any terms or conditions contained in this Agreement, the City will refund to Lessee any unearned prepaid rent still in its possession.

ARTICLE XI

PUBLIC RECORDS

11.1 The CITY OF FELLSMERE is a “public agency” subject to Chapter 119, Florida Statutes. Lessee shall comply with all applicable public records laws:

A) IF LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LESSEE’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.

- B) Lessee shall comply with the public records law, specifically to:
- i. Keep and maintain public records required by the City to perform the service.
 - ii. 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.
 - iii. 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 termination of the Agreement if Lessee does not transfer the records to the City.
 - iv. Upon termination of the Agreement, transfer, at no cost, to the City all public records in possession of Lessee or keep and maintain public records required by the City. If Lessee transfers all public records to the City upon termination of the Agreement, Lessee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Lessee keeps and maintains public records upon termination of the Agreement, Lessee 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.

- C) Requests for public records shall be processed as follows:
- i. If Lessee receives a request to inspect or copy public records relating to the City's Agreement with Lessee, Lessee 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 Lessee of the request, and Lessee must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
 - ii. If Lessee does not comply with the City's request for records, the City shall enforce the Agreement provisions in accordance with the Agreement.
 - iii. Should Lessee fail to provide the public records to the City within a reasonable time, Lessee may be subject to penalties under Section 119.10, F.S.
- D) Failure of Lessee 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 Article shall survive the termination of this Agreement.

ARTICLE XII

INDEMNIFICATION

12.1 Lessee 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 (the "**Losses**") arising out of any negligence, recklessness, or international misconduct, act or omission of Lessee and causing injury to any person or persons or property, whomsoever and whatsoever related to the Lessee's use of the Lease Premises and Access License, provided, however, in no event shall Lessee indemnify the City for any such Losses to the extent arising from the gross negligence or willful misconduct of the City.

12.2 Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

12.3 All provisions of indemnification shall survive the termination and expiration of this Agreement.

12.4 EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES

WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

ARTICLE XIII

INSURANCE

13.1 The Lessee shall not commence work under this Agreement until it has obtained all insurance required under this Article nor shall the Lessee allow any Subcontractor to commence work on his sub-contract until all such insurance required of the subcontractor has been obtained and approved.

13.2 A certificate of insurance reflecting evidence of the required insurance shall be filed with the City prior to the commencement of any work contemplated under this Agreement. Lessee shall provide the City with at least thirty (30) days' prior written notice of any cancellation or required coverage that is not replaced. Policies shall be issued by companies eligible to do business under the laws of the State of Florida.

13.3 Insurance shall be in force until all work contemplated under the terms of the Agreement is satisfactorily completed as evidenced by the formal acceptance by the City. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the Lessee shall furnish, at least ten (10) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect.

13.4 The Lessee shall not perform or continue to perform work contemplated in this Agreement unless and until all required insurance remains in full force and effect.

13.5 Required Insurance:

13.5.1 Commercial General Liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

Bodily Injury and Property Damage	2,000,000
1. Each Occurrence	1,000,000
2. Annual Aggregate	1,000,000
Personal Injury Annual Aggregate	2,000,000

Evidence of Completed Operations and Products Liability shall be maintained for two (2) years after the final payment.

Property Damage Liability Insurance shall include Coverage for the following hazards:

- X - explosion
- C - collapse
- U - underground

13.5.2 Workers Compensation insurance shall be maintained during the life of this Agreement to comply with statutory limits for all employees, and in the case any work is sublet, Lessee shall require the subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by Lessee. The Lessee and his subcontractors shall maintain during the life of this policy Employers Liability Insurance. The following limits must be maintained:

Workers Compensation	Statutory
Employer's Liability	\$100,000 per occurrence
	\$500,000 Disease policy limit
	\$100,000 Disease each employee

If Lessee claims to be exempt from this requirement, Lessee shall provide City proof of such exemption along with a written request for City to exempt Lessee.

13.5.3 Commercial Auto Liability coverage shall include owned, hired and non-owned vehicles.

Bodily Injury and Property Damage	
1. Each Accident	\$2,000,000

13.5.4 Lessee shall include the City as an additional insured on each of the liability policies required herein and shall hold the City harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder.

13.5.5 Any insurance required of Lessee pursuant to this Agreement must also be required by any contractor, subcontractor or sublessee, including naming the City as an additional insured, in any work is subcontracted unless such subcontractor is covered by the protection afforded by the Lessee and provided proof of such coverage is provided to City. The Lessee and any sublessee shall maintain such policies during the term of this Agreement.

13.5.6 Umbrella Liability. In addition to the above stated policies Lessee shall maintain, for the term of this Agreement (and any renewals thereof), an excess umbrella liability policy wherein the City shall be named as an additional insured.

Limit	\$5,000,000.00 per occurrence and in the aggregate. Lessee may use any combination of primary and excess to meet required total limits.
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- 13.5.7 The City reserves the right to require any other reasonable insurance coverage that may be necessary depending upon the exposures, provided such additional insurance is generally adopted for similar structures and operations as the Tower Facility.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 **Assignment.** Lessee shall not assign, sell, lease, or transfer all or any part of this Agreement without prior written consent of City Council of the City of Fellsmere, which shall be in City Council's reasonable discretion. This Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties and their respective successors and permitted assigns. Notwithstanding the foregoing, Lessee may transfer or assign this Agreement to Lessee's lender, principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all of or substantially all of Lessee's assets or ownership interests by reasons of merger, acquisition or other business reorganization without the City's consent (a "**Permitted Assignment**").

14.2 **Governing Law; Venue.**

14.2.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies.

14.2.2 Any claim, cause of action, objection or dispute arising out of the terms of this Agreement shall be litigated in the courts of Indian River County, Florida, if filed in State court, or the United States District Court, Southern District of Florida, Ft. Pierce Division, if filed in Federal court, which courts shall have exclusive jurisdiction for such purpose.

14.3 **Insolvency.** In the event that Lessee shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of City and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

14.4 **Entire Agreement.** This Agreement and its exhibits and attachments sets forth all the promises, agreements, conditions, and understandings, either oral or written, between the Parties.

14.5 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision shall be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this

Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling and to include as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible.

14.6 **Notices.** Any notice required or that may be given under this Agreement shall be provided in writing by certified mail return receipt requested and shall be deemed received two days after the date of sending, to the following parties, with mandatory copies, as provided below:

For City:	Mark D. Mathes City Manager 22 S. Orange Street Fellsmere, FL 32948 citymanager@cityoffellsmere.org	With Copy to: City Clerk City of Fellsmere 22 S. Orange Street Fellsmere, FL 32948 cityclerk@cityoffellsmere.org
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For Lessee: Vertical Bridge VBTS, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487
Dan.Marinberg@verticalbridge.com

For Lender: Toronto Dominion (Texas) LLC
31 West 52nd Street
New York, NY 10019
Attn: Admin Agent
Fax No. 416-982-5535

14.7 **Attorneys' Fees.** In the event of litigation of any claim, cause of action, objection or dispute arising out of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, including paralegal fees, and costs.

14.8 **Waiver of Compliance; Consents.** 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.

14.9 Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

14.10 Waiver of Jury Trial. Each of the Parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement. This provision is a material inducement for the parties hereto to enter into this Agreement and shall survive the termination of this Agreement.

14.11. Right of First Refusal. In the event the City determines to sell, transfer, license or otherwise convey any interest, whether fee simple interest, easement interest, leasehold, or otherwise, and whether direct or indirect by way of transfer of ownership interests in the City if the City is an entity, which interest underlies or affects any or all of the Premises (the "**ROFR Property**") to any third party that is a Third Party Competitor (as defined below), to the extent not prohibited by law, the City shall offer Lessee a right of first refusal to purchase the Premises (or such larger portion of the Property that encompasses the Premises, if applicable). For purposes herein, a "**Third Party Competitor**" is any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing communications infrastructure or any person or entity directly or indirectly engaged in the business of owning, acquiring, or investing in real property leases or easements underlying communications infrastructure. In such event, the City shall send a written notice to Lessee that shall contain an offer to Lessee of a right of first refusal to purchase the ROFR Property, together with a copy of any offer to purchase, or any executed purchase agreement or letter of intent (each, an "**Offer**"), which copy shall include, at a minimum, the purchase price or acquisition price, proposed closing date, and financing terms (collectively, the "**Minimum Terms**"). Within thirty (30) days of receipt of such Offer, Lessee shall provide written notice to the City of Lessee's election to purchase the ROFR Property on the same Minimum Terms; provided, the closing date shall be no sooner than sixty (60) days after Lessee's purchase election notice; and further provided that given the City's direct relationship and access to Lessee, Lessee shall not be responsible for payment of any broker fees associated with an exercise of Lessee's rights to acquire the ROFR Property. Within thirty (30) days of receipt of such Offer, Lessee shall provide written notice to the City of Lessee's election to purchase the ROFR Property on the same Minimum Terms; provided, the closing date shall be no sooner than sixty (60) days after Lessee's purchase election notice; and further provided, that Lessee shall not be required to match any components of the purchase price which are speculative or incalculable at the time of the Offer. In such event, the City agrees to sell the ROFR Property to Lessee subject to Lessee's payment of the purchase price and compliance with a purchase and sale agreement to be negotiated in good faith between the City and Lessee. If Lessee provides written notice that it does not elect to exercise its right of first refusal to purchase the ROFR Property, or if Lessee does not provide notice of its election within the thirty (30) day period, Lessee shall be deemed to have waived such right of first refusal only with respect to the specific Offer presented (and any subsequent Offers shall again be subject to Lessee's continuing right of first refusal hereunder), and the City shall be permitted to consummate the sale of the ROFR Property in accordance with the strict terms of the Offer ("**Permitted Sale**"). If the City does not consummate the Permitted Sale within ninety (90) days of the date of Lessee's waiver of its right of first refusal, including if the Minimum Terms are modified between the City and the Third Party Competitor, the City shall be required to reissue a New Offer to Lessee.

14.12. Subordination, Non-Disturbance and Attornment. In the event the Property is encumbered by a mortgage or deed of trust or other security instrument of any kind (a “**City Mortgage**”), the City, within fifteen (15) days following Lessee’s request or immediately prior to the creation of any encumbrance created after the date this Agreement is fully executed, will obtain from the holder of each such City Mortgage a fully-executed subordination, non-disturbance and attornment agreement (an “**SNDA**”) in recordable form, which shall be prepared or approved by Lessee. The holder of every such City Mortgage shall, in the SNDA, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure of the City’s interest in the Premises, such City Mortgage holder shall recognize and confirm the validity and existence of this Agreement, not disturb the tenancy of Lessee (and its customers, subtenants, and licensees) and Lessee (and its customers, subtenants, and licensees) shall have the right to continue its use and occupancy of the Premises in accordance with the provisions of this Agreement, provided Lessee is not in default of this Agreement beyond applicable notice and cure periods.

14.13. Lender Rights. The City agrees to recognize the subleases and licenses of all subtenants and licensees and will permit each of them to remain in occupancy of its premises notwithstanding any default hereunder by Lessee so long as each such respective subtenant or licensee is not in default under the lease/license covering its premises and the City continues to receive its entire monthly rent due under this Agreement. The City agrees to execute such documents as any such subtenant and/or licensee might reasonably require, including customary subordination, non-disturbance and attornment agreements and/or the City recognition agreements, to further memorialize the foregoing, and further agrees to use the City’s best efforts to also cause its lenders to similarly acknowledge, in writing, subtenant’s and licensee’s right to continue to occupy its premises as provided above.

14.13.1 The City consents to the granting by Lessee of a lien and security interest in Lessee’s interest in this Agreement and/or leasehold estate of the Leased Premises and all of Lessee’s personal property and fixtures attached to the real property described herein, and furthermore consents to the exercise by Lender of its rights of foreclosure with respect to its lien and security interest. The City agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure.

14.13.2 The City hereby agrees to give Lender written notice of any breach or default of Lessee of the terms of this Agreement within fifteen (15) days after the occurrence thereof at the address set forth in Section 14.6 Notices above. The City further agrees that no default under this Agreement by Lessee shall be deemed to have occurred unless such notice to Lender is also given and that, in the event of any such breach or default under the terms of this Agreement, Lender shall have the right, to the same extent, for the same period and with the same effect, as Lessee. The City shall have no right, and expressly waives any right arising under applicable law, in and to the rentals or other fees payable to Tenant, if any, under any sublease or license of the Leased Premises by Tenant, which rentals or

fees may be assigned by Tenant to Lender, provided that the City is receiving its entire monthly rent due under this Agreement.

14.13.3 Lessee shall have the right from time to time to mortgage or otherwise encumber Lessee's interest in this Agreement and/or leasehold estate in the Leased Premises; provided, however, in no event shall there be more than one such mortgage or encumbrance outstanding at any one time. If Lessee shall so mortgage (each a "**Lessee Mortgage**") Lessee's interest in this Agreement and/or leasehold interest in the Leased Premises to Lender, Lessee or Lender shall give The City prompt notice of such Lessee Mortgage and furnish the City with a complete and correct copy of such Lessee Mortgage, certified as such by Lessee or Lender, together with the name and address of Lender if it is different from the information set forth in the notice provisions hereof. The term "**Lender**" as used in this Agreement shall mean the lender identified in the notice provisions hereof and its successors, assigns, designees or nominees, provided such successors, assigns, designees, or nominees give the City their name and address for notice purposes.

14.14. Additional Provisions. The parties hereto agree that (i) Lessee is in possession of the Premises notwithstanding the fact that Lessee has subleased or licensed, or may in the future sublease or license, certain of the improvements thereon or portions of the Premises to third parties, and (ii) the requirements of Section 365(h) of Title 11 of the United States Code (the Bankruptcy Code) with respect to Lessee's possession of the leasehold under this Agreement are satisfied. Accordingly, the right of Lessee to remain in possession of the leasehold under this Agreement shall continue notwithstanding any rejection of this Agreement in any bankruptcy proceeding involving the City, or any other actions by any party in such a proceeding. This provision, while included in this Agreement, has been separately negotiated and shall constitute a separate contract between the parties as well as a part of this Agreement. The provisions of this Section are for the benefit of Lessee and its assigns, including, without limitation, Lender. The parties hereto also agree that Lender is a party in interest and shall have the right to appear as a party in any proceeding brought under any bankruptcy law or under any other law which may affect this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year set for below, to be effective on the day and year first written above.

WITNESSES:

Print Name: _____

Print Name: _____

CITY:

City of Fellsmere, a municipal corporation
of the State of Florida

By: _____

Joel Tyson, Mayor

Date: _____

“SEAL”

WITNESSES:

Print Name: _____

Print Name: _____

LESSEE:

Vertical Bridge VBTS, LLC
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

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

Meeting Date: April 18, 2024

Agenda Item No. 13 (d)

- | | | | |
|-------------------------------------|---------------------------------|-------------------------------------|-------------------------------|
| <input type="checkbox"/> | PUBLIC HEARING | <input checked="" type="checkbox"/> | RESOLUTION No. 2024-38 |
| <input type="checkbox"/> | Ordinance on Second Reading | <input type="checkbox"/> | DISCUSSION |
| <input type="checkbox"/> | Public Hearing | <input type="checkbox"/> | BID/RFP AWARD |
| <input type="checkbox"/> | ORDINANCE ON FIRST READING | <input type="checkbox"/> | CONSENT AGENDA |
| <input checked="" type="checkbox"/> | GENERAL APPROVAL OF ITEM | | |
| <input type="checkbox"/> | Other: | | |

SUBJECT: Renewal Lease of Office Space to Substance Abuse Council of Indian River County

RECOMMENDED MOTION/ACTION: Approval

Approved by City Manager *Maria V. ...* Date: 4-9-24

Originating Department: Finance	Costs: N/A Funding Source: Acct. #	Attachments: R-2024-38 & Modification of Lease Agreement
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 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:

The City has leased space to Substance Abuse Council of Indian River County and the lease has expired on March 1, 2024. Staff has determined that the current conditions shall be extended another year to March 1, 2025 at lease rate of \$100 per month which remains unchanged. At the end of the lease term, the City may choose to reallocate the shared room to another service provider if desired.

RESOLUTION NO. 2024-38

A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA AUTHORIZING THE EXTENSION OF THE LEASE AGREEMENT FOR CERTAIN CITY OWNED REAL PROPERTY PURSUANT TO SECTION 2-230 OF THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA, FOR THE SUBSTANCE ABUSE COUNCIL OF INDIAN RIVER COUNTY, INC. D/B/A SUBSTANCE AWARENESS CENTER OF INDIAN RIVER COUNTY; PROVIDING FOR THE PURPOSE FOR WHICH SUCH REAL PROPERTY WILL BE USED; PROVIDING FOR THE TERM OF THE EXTENSION OF THE LEASE AGREEMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Substance Abuse Council of Indian River County, Inc. d/b/a Substance Awareness Center of Indian River County (“SAC”) has requested a one (1) year extension of its Lease Agreement with the City to be assured of a place to provide counseling and assistance services for substance abuse; and

WHEREAS, SAC is a not-for-profit organization and will provide counseling and assistance services for substance abuse benefiting City residents and the public at large; and

WHEREAS, the City Council finds that SAC is a not-for-profit organization and that the provision of counseling and assistance services for substance abuse on public property constitutes a public purpose consistent with the provisions in Section 2-230 of the Code of Ordinances of the City of Fellsmere, Florida; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Modification of Lease Agreement attached hereto.

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 and confirmed as legislative findings by the City Council.

SECTION 2. PURPOSE. SAC has applied to the City to extend the term of the Lease Agreement for the real property described in the First Modification of Lease Agreement attached hereto as Exhibit “A” and by this reference made a part hereof, (the “First Modification of Lease Agreement”) for the purpose of providing a location to provide its services until midnight on March 1, 2025.

SECTION 3. USE. SAC is granted use of the real property described in the First Modification of Lease Agreement for the purpose of providing counseling and assistance services for substance abuse and shall be subject to the terms of said First Modification of Lease Agreement.

SECTION 4. LEASE TERM. The term for the Lease Agreement effective March 2, 2023, is extended for one (1) year to March 1, 2025.

SECTION 5. RENTAL AMOUNT. The monthly rental amount shall be \$100.00 and other considerations, subject to the terms of the Lease.

SECTION 6. FIRST MODIFICATION OF LEASE AGREEMENT. The Mayor and City Clerk are hereby authorized to sign the First Modification of Lease Agreement attached hereto as Exhibit "A." In the event of a conflict between the terms of this Resolution and the First Modification of Lease Agreement, the terms of the First Modification of Lease Agreement shall prevail.

SECTION 7. 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 8. SEVERABILITY. If any section, part of a sentence, paragraph, phrase or word of this Resolution are for any reason held to be unconstitutional, inoperative or void, such holding shall not effect 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 9. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

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

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

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

CITY OF FELLOSMERE, FLORIDA

Joel Tyson, Mayor

Attest:

(S E A L)

Maria F. Suarez-Sanchez, City Clerk

FIRST MODIFICATION OF LEASE AGREEMENT

THIS AGREEMENT made this ____ day of April, 2024, to be effective as of March 1, 2024, between the CITY OF FELLSMERE, FLORIDA, a municipal corporation created pursuant to the laws of the State of Florida (the "Landlord") and SUBSTANCE ABUSE COUNCIL OF INDIAN RIVER COUNTY, INC., a Florida not-for-profit corporation, d/b/a SUBSTANCE AWARENESS CENTER OF INDIAN RIVER COUNTY, whose address is 1507 20th Street, Vero Beach, Florida 32960 (hereafter collectively the "Tenant").

WHEREAS, Landlord and Tenant entered into a Lease Agreement effective as of March 2, 2023, for certain shared office space within City Hall located outside the City Manager's office and an adjacent conference room, which ended on March 1, 2024; and

WHEREAS, Tenant has requested that the Lease Agreement be retroactively modified at this time to add another year so that the Tenant will have a one (1) year Lease Term beginning on March 1, 2024, and ending at midnight on March 1, 2025.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lease Agreement shall be modified as hereafter provided.

1. The above recitals are hereby ratified, confirmed and incorporated herein.
2. That Section 1. INITIAL LEASE TERM, SUBSEQUENT LEASE TERMS, TERMINATION AND RENT, of the Lease Agreement is hereby amended to read as follows:

Section 1. INITIAL LEASE TERM, SUBSEQUENT LEASE TERMS, TERMINATION AND RENT.

Landlord hereby Leases to Tenant and Tenant hereby Leases from Landlord the Shared Office Space outside the City Manager's office for substance abuse counseling services, hereinafter referred to as the "Premises". In addition to the Shared Office Space, the Tenant may use the adjacent conference room when available with availability being determined solely by the Landlord. In addition, the Landlord will attempt to make other space in the City Hall available on an ad hoc basis, such as the choir room, computer lab or auditorium at the Landlords sole discretion. The term of Lease will begin on March 1, 2024 (Effective Date) and end at midnight on March 1, 2025. The rent for the term shall be One Hundred and 00/100 Dollars (\$100.00) per month payable by the first day of each month, plus sales tax, if any. The rent increase for subsequent Lease terms, if any, shall be determined jointly

between Landlord and Tennant based on a review of maintenance and utility expenses experienced during the initial or subsequent lease term(s). At the sole discretion of the Landlord the minimum rent shall be set at a level to cover the cost of maintenance and utilities attributed to the Premises.

All payments due under this Lease shall be made to the Landlord at the following address: City of Fellsmere, 22 S. Orange Street, Fellsmere, FL 32948-6714. Either party shall have the right to terminate this Lease at any time upon giving sixty (60) days written notice to the other party and upon termination of this Lease, Tenant agrees to return the Premises, including any additional space provided by the Landlord, in the same condition they were when this Lease was entered into, ordinary wear and tear excepted.

- 3. This First Modification of Lease Agreement is subject to all other terms and conditions of the original Lease Agreement effective as of March 2, 2023, and all provisions of the original Lease Agreement are incorporated herein and are hereby modified or supplemented to conform herewith, but in all other respects are to be and shall continue in full force and effect.

A facsimile or electronic mail copy of this Agreement and any signatures hereon shall be considered for all purposes as originals.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Modification of Lease Agreement or have caused the same to be executed as of this ___ day of _____, 2024.

LANDLORD:

City of Fellsmere, Florida

By: _____
Joel Tyson, Mayor

ATTEST:

Maria F. Suarez-Sanchez,CMC, City Clerk

[SIGNATURE ON NEXT PAGE]

TENANT:

Substance Abuse Council of Indian River
County, Inc., d/b/a Substance Awareness
Center of Indian River County

By: _____

Print Name: _____

Its: Executive Director

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

Meeting Date: April 18, 2024

Agenda Item No. 13(e)

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

SUBJECT: Change Order #2 to Work Order #4 for Culpepper & Terpening.to provide for additional survey work for the Rail Trail from Broadway to the State Park Preserve.

RECOMMENDED MOTION/ACTION: Approve Change Order #2 to Work Order #4 for Culpepper & Terpening.

Approved by City Manager *Mark N. [Signature]* Date: 4-9-24

Originating Department: Grants	Costs: \$12,750.00 Funding Source: Infrastructure	Attachments: 1. Work Order #4 2. Change Order #2
Department Review: <input checked="" type="checkbox"/> City Attorney Warren Dill <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone ____ or Not applicable in this case <u>X</u> Please initial one.

Submittal information: Council meets on the first and third Thursdays of each month. Agenda submittal deadline to the City Clerk is 12:00 noon of the last and second Wednesday of each month. Therefore, the deadline of the Agenda Request Form to the City Manager shall be the last and second Monday prior to the Thursday deadline.

Summary Explanation/Background:

The City was previously awarded a grant from the State of Florida, Department of Transportation, under their Transportation Alternative Program to construct a trail from North Broadway to Grant Avenue. Rather than issue a separate grant for the remainder of the trail from Grant Avenue to the State Park, the Department of Transportation amended the original grant to cover the entire trail area from North Broadway to the State Park Preserve.

Council previously approved attached Work Order #4 in the amount of \$64,850.00 to Culpepper & Terpening (C&T) for civil design and permitting services for the trail from Broadway to Grant and Change Order #1 in the amount of \$88,205.00 for design services for the remainder of the trail (Grant Avenue to State Park). This agenda item is to approve Change Order #2 in the amount of \$12,750 for the additional services of Wetland Location and Mapping; creation of a geographic information system (GIS) exhibit showing overall project limits and parent parcels; and creation of a sketch and description of the project limits within each of the parent parcels. Wetland surveying was not part of the agreement as no wetlands were expected within the project limits. Unfortunately, that is not the case. The State requested the GIS exhibit related to property owners. This information to be provided by Culpepper & Terpening is essential to continue moving forward with this project.

EXHIBIT "B"
WORK ORDER
FOR
NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT

CITY OF FELLSMERE

WORK ORDER NO. 0 4

NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT

Professional: Culpepper & Terpening, Inc.

Project Title: Broadway to Grant Sidewalk

Type of Work (check all that apply):

- | | |
|-----------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> General Consulting | <input checked="" type="checkbox"/> Preliminary Design (30%) |
| <input type="checkbox"/> Code Plan Review | <input checked="" type="checkbox"/> Design Development (80%) |
| <input type="checkbox"/> Ordinance/Rule Development | <input checked="" type="checkbox"/> Construction Documents (100%) |
| <input type="checkbox"/> Studies and Reports | <input checked="" type="checkbox"/> Bid Services |
| <input type="checkbox"/> Expert Witness | <input type="checkbox"/> Construction Engineering Inspection |
| <input type="checkbox"/> Other | <input checked="" 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 \$64,850.00 without prior written consent.

Professional (Culpepper & Terpening, Inc.)

Stefan K
Matthes

(signature)

Digitally signed by Stefan K
Matthes
Date: 2022.05.08 08:56:53
-0400

City of Fellsmere



(signature)

Stefan K. Matthes, Senior Vice President
(print Name & Title)

Joel Tyson, Mayor
(print name & Title)

Date: 06/02/2022

**Rail Trail Sidewalk
Culpepper & Terpening, Inc. Project No. 22-075
City of Fellsmere Professional Services Agreement
Work Authorization No. 4
April 29, 2022**

**EXHIBIT "C"
SCOPE OF SERVICES**

Project Description:

The project shall generally be defined and described as providing professional engineering services to the City of Fellsmere (City) for the design and permitting of approximately 3,400 lineal feet of twelve-foot wide paved sidewalk. The sidewalk will be constructed along the north side of the Rail Trail from the Broadway Street to approximately 630' east of Willow Street. This project is being completed through the FDOT Transportation Alternative Program (TAP) and the consultant will be responsible for completing the necessary submittals and preparing the design so that the project is in compliance with FDOT TAP requirements.

Consultant shall assist the City with the development of Construction plans and permits to facilitate the project. The Construction Plans shall be prepared in accordance with the Florida Department of Transportation (FDOT) Plans Preparation documents and City requirements. The scope shall include the following elements:

- Design Survey
- Construction Plan Preparation
- Project Permitting
- Geotechnical Exploration
- Bid Services

The intent of the following detailed scope of service is to provide sufficient information for the project to be developed in accordance with the City's Local Area Program (LAP) agreement with the FDOT.

The specific scope of services to be performed by Consultant is as follows:

Phase 2: PRELIMINARY DESIGN SERVICES

Task 2.1 Design Survey

Consultant shall provide survey data collection for the entire route of the project. The survey shall include Right-of-Way determination and topographic data collection, both horizontal and vertical for the project. The data collection shall be performed from a minimum of 15' outside of each side of the subject Right-of-Way including the Rail Canal. The vertical datum shall be consistent with the City of Fellsmere's 1988 NAVD control network. The work effort shall include the following components:

- Set Horizontal Control Points along the project route
- Set Vertical Control Points along the project route
- Control for Right-of-Way resolution
- R/W cross sections and locations at 200' intervals.
- Trees within Right-of-Way

The survey data collection shall include subsequent survey efforts throughout the design process.

**Rail Trail Sidewalk
Culpepper & Terpening, Inc. Project No. 22-075
City of Fellsmere Professional Services Agreement
Work Authorization No. 4
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Task 2.2 **Subsurface Soils Exploration and Geotechnical Evaluation**

Consultant shall provide a subsurface Soils Exploration and Geotechnical Evaluation of the project corridor. The program shall consist of the following items work:

- 8 auger Borings, approximately every 500 feet along the corridor to a depth of 5' using a 3" diameter hand held bucket.
- Strata samples at each change
- Determination of water levels
- Typical soils classifications for each strata encountered (sieve analysis, atterberg limits, organic content, etc.)

Consultant shall provide a Geotechnical Evaluation Report of the finding and any recommendation required to provide construction of the sidewalk and ancillary items of construction.

Phase 3: FINAL DESIGN SERVICES

Task 3.1 **Initial (30% Plan) Submittal**

Consultant shall provide the City with the 30% submittal documents. The Plans shall be prepared on 11" x 17" size format and comply with the City criteria, FDM, and FDOT Design Standards. The 30% Plan submittal requirements shall be in accordance with the PPM, Volume II, Chapter 2.3.2, and include the following components:

- Key Sheet (Preliminary)
- Drainage Map @ 300 scale (Preliminary)
- Typical Sections (Preliminary)
- Project Layout Sheets @ 300 scale (Preliminary)
- Plan Sheets @ 40 Scale (Preliminary)
- Intersection Crossing Detail Sheets (Preliminary)
- Cross Sections @ 200' intervals (Preliminary)
- General Notes Sheet (Preliminary)

The submittal documents shall also include the following:

- Prepare Engineer's Estimate of Probable Construction Cost commensurate with the development of the 30% plan information.

Task 3.2 **Constructability (80%) Plans**

Consultant shall provide the City with the 80% submittal documents in accordance with the FDOT PPM and the LAP Agreement. The Plans shall be prepared on 11" x 17" size format and comply with the City criteria, FDM, and FDOT Design Standards. The 80% Plan submittal requirements shall be in accordance with the PPM, Volume II, Chapter 2.3.2, and include the following components:

- Key Sheet (Constructability Review)
- Summary of Pay Items (Constructability Review)
- Drainage Map (Constructability Review)
- Typical Section (Constructability Review)
- Project Layout Sheets (Constructability Review)
- Plan Sheets @ 40 Scale (Constructability Review)
- Intersection Crossing Details (Constructability Review)
- Cross Sections @ 200' intervals (Constructability Review)

**Rail Trail Sidewalk
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- Outfall Profiles (Constructability Review)
- Storm Water Pollution Prevention Plan (Constructability Review)
- Traffic Control Plan (Constructability Review)

The submittal documents shall also include the following:

- Draft FDOT Technical Specifications and Special Provisions
- Update to the Engineer's Estimate of Probable Construction Cost commensurate with the development of the 80% plan information.
- City Review Response
Consultant shall prepare a written response to the City plan review of the 30% plan submittal.

Task 3.3

Bidability (100% Plan) Submittal

Consultant shall provide the City with the 100% plan submittal documents in accordance with the FDOT FDM and the LAP Agreement. The Plans shall be prepared on 11" x 17" size format and comply with the City criteria, FDM, and FDOT Design Standards. The 100% Plan submittal requirements shall be in accordance with the PPM, Volume II, Chapter 2.3.2, and include the following components:

- Key Sheet (Final)
- Summary of Pay Items (Final)
- Drainage Map @ 300 scale (Final)
- Typical Sections (Final)
- Summary of Quantities (Final)
- Project Layout Sheets @ 300 scale (Final)
- Plan Sheets @ 40 Scale (Final)
- Intersection Crossing Detail Sheets (Final)
- Roadway Soils Survey (Final)
- Cross Sections @ 200' intervals (Final)
- Stormwater Pollution Prevention Plan (Final)
- General Notes Sheet (Final)
- Traffic Control Plan (Final)
- Utility Adjustments (Final)
- Signing & Pavement Markings Plans (Final)

The submittal documents shall also include the following:

- Update to the Engineer's Estimate of Probable Construction Cost commensurate with the development of the 100% plan information.
- City & FDOT Review Response
Consultant shall prepare a written response to the City's plans review of the 80% plan submittal. The response shall be in the addition to the FDOT comments provided as part of the Electronic Review Comment (ERC) format provided by the FDOT.
- Technical Specifications and Special Provisions
Consultant shall prepare the standard technical specifications and special provisions required for inclusion in the Bid Documents. The technical specification and special provision shall be prepared in the standard FDOT format for inclusion

**Rail Trail Sidewalk
Culpepper & Terpening, Inc. Project No. 22-075
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Work Authorization No. 4
April 29, 2022**

in the City's Bid Documents. The City is to provide the standard front end documents to be incorporated into the bid documents by the Consultant.

- Final LAP Submittal Checklist
Consultant shall assist the City in the preparation of the Final LAP Submittal Checklist for the project

Task 3.4 **SJRWMD Permit**

Consultant shall provide a permit submittal to the SJRWMD for the proposed project improvements. The application shall include the documentation required to allow the SJRWMD to make the permit requirement determination.

- Wetland Permitting is Not Included
- Gopher Tortoise Permitting is Not Included

Task 3.5 **Indian River County Permit**

Consultant shall provide a permit submittal to Indian River County for the proposed crossing of CR 507.

Task 3.6 **Fellsmere Water Control District Permit**

Consultant shall provide a permit submittal to the FWCD for the proposed project improvement outfall to the Rail Canal.

Phase 4: BID SERVICES

The Consultant shall assist the City in obtaining bids by submitting the Invitation to Bid to qualified contractors of their choice. Consultant shall attend pre-bid meeting and answer any questions in writing about the bid documents during the bid process. Consultant shall release written bid addendums, if necessary. Consultant shall review bids from contractors and prepare a detailed comparison of bidder's proposals against each other and against the final Consultant's estimate of construction cost. The Professional shall provide the bid comparison to City in electronic spreadsheet format compatible with the City's operating systems along with five (5) hard copies. Professional shall recommend contract award based upon their review of the bids and bidder's references and shall provide one original and four (4) copies of their recommendation in written format.

Phase 7: LAP/FDOT ERC RESPONSES

The Consultant will provide specific items required by the FDOT as part of the Electronic Review Comment (ERC) plans acceptance process. The Consultant will provide responses to all FDOT comments using the Electric Review Comments (ERC) system. The ERC comment responses will be limited to the 80% Plans submittal, and review by the FDOT reviewers. The LAP Administrator will be responsible for requesting the Consultant's assignment to the ERC system for this project.

**Rail Trail Sidewalk
Culpepper & Terpening, Inc. Project No. 22-075
City of Fellsmere Professional Services Agreement
Work Authorization No. 4
April 29, 2022**

FEE SCHEDULE

Compensation to the Consultant shall be as set forth herein. The term "LS" indicates a Lump Sum fee for the tasks specified and is intended to be a fixed fee, not subject to change without the agreement of both parties. The term "NTE" indicates a Not to Exceed Time & Expense task and this is an estimated budget figure only.

Work effort and project expenses associated with Phases 2, 3, 4 and 7 will be invoiced on a Lump sum basis as follows:

<u>Phase/Task</u>	<u>Description</u>	<u>Task Fee</u>	
Phase 2:	Preliminary Design Services		
Task 2.1	Design Survey	\$ 8,195.00	LS
Task 2.2	Subsurface Soils Exploration Report	\$ 2,520.00	LS
Phase 3:	Final Design Services		
Task 3.1	Initial (30% Plan) Submittal	\$13,380.00	LS
Task 3.2	Constructability (80% Plan) Submittal	\$21,155.00	LS
Task 3.3	Bidability (100% Plan) Submittal	\$ 5,130.00	LS
Task 3.4	SJRWMD Permit	\$ 4,060.00	LS
Task 3.5	Indian River County Permit	\$ 1,980.00	LS
Task 3.6	Fellsmere Water Control District Permit	\$ 1,980.00	LS
Phase 4:	Bid Services	\$ 1,530.00	LS
Phase 7:	LAP/FDOT ERC Responses	\$ 3,920.00	T&E
Phase 8:	Reimbursable Expenses	\$ 1,000.00	T&E
	Total Fees	\$64,850.00	

Additional services associated with providing the following will be provided on an hourly basis in accordance with the rates provided in the Non-Exclusive Professional Services Agreement:

- Expert witness testimony regarding the findings of this contract;
- Community Awareness program assistance; and
- Post-Bid Services.

**Rail Trail Sidewalk
 Culpepper & Terpening, Inc. Project No. 22-075
 City of Fellsmere Professional Services Agreement
 Work Authorization No. 4
 April 29, 2022**

SCHEDULE

The project shall be completed in accordance with the following task schedule based upon a notice to proceed of no later than _____:

<u>Task</u>	<u>Submittal Date</u>
Task 2.1: Design Survey	60 days from NTP
Task 2.2: Geotechnical Evaluation	60 days from NTP
Task 3.1: Initial 30 % Plans Submittal	120 days from NTP
Task 3.2: Constructability 80% Plan Submittal	180 days from NTP
Task 3.3: Bidability 100% Plan Submittal	240 days from NTP
Task 3.4: Project Permits	180 days from NTP

The project deliverables associated with each of Phases 2 and 3 provided in Exhibit "A" will be delivered to the City in accordance with the schedule provided above. Three (3) hard copies and an electronic file of each of the deliverables will be as follows:

PHASE #	TASK #	DESCRIPTION
Phase 2: Preliminary Design Services:		
	• 2.1	Design Survey - 24" x 36" Plans
	• 2.2	Geotechnical Evaluation
Phase 3: Final Design Services:		
	• 3.1	Initial 30% Plans - 11" x 17" Plans
	• 3.2	Constructability 80% Plans - 11" x 17" Plans
	• 3.3	Specifications and Technical Special Provisions
	• 3.3	Buildability 100% Plans - 11" x 17"
	• 3.4 & 3.5	Project Permits



March 25, 2024

Project Number: 22-075

Contract File

Sender's Email: ebrown@ct-eng.com

VIA: Email citymanager@cityoffellsmere.org

Attn: Mr. Mark Mathes
City of Fellsmere
22 S. Orange Street
Fellsmere, Florida 32948

RE: Project Number: 22-075
Project Name: Fellsmere - Rails Trails Sidewalk Design – Change Order #2
Agreement for Professional Engineering & Surveying Services

Dear Mr. Mark Mathes:

On behalf of the firm of Culpepper & Terpening, Inc., we are pleased to enclose our *Agreement for Professional Engineering & Surveying Services* for survey for existing wetlands the within project limits. Consultant shall also provide GIS exhibit and Sketch and Descriptions of the project limits.

If this proposal meets with your approval, please execute both contracts, initial each page, and return both copies to our office. Upon receipt, we will provide your office with one fully-executed original contract. An executed contract will serve as the notice to proceed.

We appreciate the opportunity to provide this proposal. We look forward to being a part of your project team. Should you have any questions or require any additional information, please feel free to contact me directly at (772) 464-3537.

Sincerely,
CULPEPPER & TERPENING, INC.

Eliot Brown, PE
Project Engineer, PE

Stefan Matthes, P.E.
Senior Vice President

Enclosure: Agreement for Engineering & Surveying Services

CC: C&T Accounting

**Professional Services Agreement Between
Culpepper & Terpening, Inc. (Consultant) for
City of Fellsmere (Client)
Project Name Fellsmere - Rails Trails Sidewalk Design Project Number 22-075
March 25, 2024

WORK AUTHORIZATION NO. :	22-075
PROJECT NAME:	Fellsmere - Rails Trails Sidewalk Design - CO#2
CONSULTANT:	Culpepper & Terpening, Inc.

This Agreement for Engineering Services ("Agreement") is made and entered into between City of Fellsmere, hereinafter designated as the "CLIENT" and CULPEPPER & TERPENING, INC. as the "Consultant", the parties agree to services and conditions hereinafter stated.

I. PROJECT DESCRIPTION/OBJECTIVES

Consultant shall provide survey for existing wetlands within the project limits. Project limits are between 134th Court and State Park. Consultant shall also provide GIS exhibit and Sketch and Descriptions of the project limits.

II. SCOPE OF SERVICE

Services to be provided by this Consultant pursuant to this Work Authorization (WA) shall be provided in accordance with the services under Section II and payable in the amount set forth in Section IV.

To accomplish the above objectives, the services will be divided into the following tasks:

<u>TASK</u>	<u>TASK DESCRIPTION</u>
7.20	Wetland Location and Mapping Consultant to coordinate with E-Reg Consulting, LLC for the flagging of wetland conditions. Consultant to field locate wetland flagging for 13 predetermined wetland areas along the project corridor and prepare a CAD drawing of same for use in updating design plans.
7.21	GIS Exhibit Consultant to prepare a property ownership exhibit showing the overall project limits and parent parcels with publicly available ownership information
7.22	Sketch & Descriptions Consultant to prepare a sketch and description of the project limits within each parent parcel (PIDs 31370000001000000003.1 & 31370000001000000005.0) based on line work provided by the design team.

III. ASSUMPTIONS/CLARIFICATIONS

- 1 All landscaping, irrigation and lighting by others
- 2 Subsurface Hydrology Reports/Opinions by Others
- 3 Easement Preparation billed as Additional Service
- 4 Location of improvements is limited to significant above ground improvements.
- 5 A onetime review of title shall be performed. An estimated budget of 4 man hours is included. Any revisions to title commitment resulting in additional title review will be billed on an hourly basis.

Client's Initials: _____

C&T Initials: _____

**Professional Services Agreement Between
Culpepper & Terpening, Inc. (Consultant) for
City of Fellsmere (Client)
Project Name Fellsmere - Rails Trails Sidewalk Design Project Number 22-075
March 25, 2024

- 6 Archaeology Determinations by others
- 7 Title Work and or Deeds and easement agreements provided by Client
- 8 Re-staking or additional services outside of this scope will be billed as a T&E expense according to the Exhibit A, attached herein.
- 9 Scope/Price is based on use of Standard C&T Contract.
- 10 Coordination and Mitigation with the St Johns River Water Management District for wetland impacts if required shall be additional services.

IV. BREAKDOWN OF FEES FOR BASIC SERVICES

Work authorized is estimated to be completed in accordance with the following schedule:

Task#	Task Description	Amount	Fee Type
7.20	Wetland Location and Mapping	\$ 5,900.00	LS
7.21	GIS Exhibit	\$ 3,450.00	LS
7.22	Sketch & Descriptions	\$ 3,400.00	LS
Estimated Total		\$ 12,750.00	

The term "LS" indicates a Lump Sum fee for the tasks specified and is intended to be a fixed fee, not subject to change without the agreement of both parties. The term "T&E" indicates a Time & Expense task and this is an estimated budget figure only.

V. AGREEMENT

The following documents, as applicable, are attached and are incorporated into this Work Authorization:

- Exhibit A: General Conditions

Approved By:
City of Fellsmere

Submitted By:
Culpepper & Terpening, Inc.

Mr. Mark Mathes

Stefan Matthes, P.E.
Senior Vice President

Date:

Date:

Client's Initials: _____

C&T Initials: _____

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

Meeting Date: April 18, 2024

Agenda Item No. 13(f)

- | | | | |
|-------------------------------------|---------------------------------|--------------------------|----------------|
| <input type="checkbox"/> | PUBLIC HEARING | <input type="checkbox"/> | RESOLUTION No |
| <input type="checkbox"/> | Ordinance on Second Reading | <input type="checkbox"/> | DISCUSSION |
| <input type="checkbox"/> | Public Hearing | <input type="checkbox"/> | BID/RFP AWARD |
| <input type="checkbox"/> | ORDINANCE ON FIRST READING | <input type="checkbox"/> | CONSENT AGENDA |
| <input checked="" type="checkbox"/> | GENERAL APPROVAL OF ITEM | | |
| <input type="checkbox"/> | Other: | | |

SUBJECT: Employment Contract – PW Engineering Inspector

RECOMMENDED MOTION/ACTION: Approval

Approved by City Manager *M. W. [Signature]* Date: 4-9-24

Originating Department: Finance	Costs: vary Funding Source: GF-PW Acct. #	Attachments: Employment Contract, Job description
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.

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:

City Staff is recommending Mr. Tanner Green for the position of PW Engineering Inspector. Out of four candidates, his experience in related work environments prove to be the most qualified candidate for this position. This position is temporary, three-year contract, with the possibility of converting to a permit position at the end of the contract period. The new hire will oversee city capital projects as well as private project site inspections such as new developments. Job description is provided. The agreed upon yearly base salary is \$63,440 plus full-time benefits that are offered to regular full-time employees such as contributions to Deferred Compensation 457 (b) Retirement plan, health, dental, vision, and life insurance. This position is also assigned a city vehicle for use to conduct city inspections.

Staff recommends approval.

PART 5 – POSITION CLASSIFICATIONS AND PAY PLAN

PUBLIC WORKS ENGINEERING INSPECTOR

Salary: \$50k-\$80k

MAJOR FUNCTION

Performs quality assurance inspections on all phases of construction of Public Works to ensure compliance with plans, standards, specifications, codes, permits and ordinances. Serves as field resource for both City staff and contractors. Assists in the implementation of the City's illicit discharge detection and elimination program and storm water management plan. Factors such as regular attendance at the job are not routinely listed in job descriptions but are an essential function.

ILLUSTRATIVE DUTIES

Essential duties and responsibilities may include, but are not limited to, the following:

- Performs field inspections of construction improvements for compliance with plans and specifications to approve and/or reject all phases of construction.
- Monitors contractor schedules to ensure milestones are met and resolve potential problems.
- Ensures proper signage, barricading and construction are according to plans.
- Enforces City ordinances associated with on-site and off-site improvements.
- Reviews and evaluates requests for information, third party material testing, change orders, and pay applications for accuracy.
- Coordinates work with City departments and other agencies and attend construction and project related meetings with other agencies, contractors, and utility companies.
- Review construction documents and structural specifications for system and material requirements.
- Prepare reports and document project activities and data, scan field division files, plans, and records.
- Review and approve traffic control plans; ensure compliance with Manual on Uniform Traffic Control Devices (MUTCD) regulations, inspects temporary traffic control, road closures and restrictions.
- Process right-of-way permits; tabulate payments for permits; posting inspection results.
- Verifies permits, license, and insurance certificates.
- Conduct citywide inspections and complete reports for the City's public works.
- May collect geographic information systems (GIS) data and perform limited survey work.
- Ensure compliance with safety procedures.

MINIMUM QUALIFICATIONS

- High School or GED and four (4) years paid fulltime experience performing construction inspection of public improvements (roads, bridges, storm drains, curbs, public or private buildings, facilities, utilities, etc.) .
- Knowledge of business, English, punctuation, arithmetic, and spelling.
- Ability to follow departmental regulations and policies.
- Ability to work independently and to carry out assignments to completion with minimum instruction.
- Ability to maintain complex records and produce reports with extreme accuracy.
- Ability to work well with others.
- Working knowledge and capable of using computer hardware and software normally used in office work.
- Knowledge of modern construction methods, practices, materials, and equipment as applied to review of plans and specification and the inspection of public works, buildings, and structures.
- Read, interpret, and analyze plans and specifications for major public works, buildings, and structures.
- Analyze problems, identify alternative solutions, project consequences of proposed action and implement recommendations in support of goals.

PART 5 – POSITION CLASSIFICATIONS AND PAY PLAN

- Communicate clearly and concisely, both orally and in writing.
- Knowledge of construction local, state, and federal site safety regulations.
- Establishing and maintaining cooperative working relationships with contractors, coworkers and other individuals in contact during the course of work.
- Communicating clearly and concisely; following instructions; working with little or no direct supervision.

KNOWLEDGE AND SKILL

City and Department procedures, policies, and guidelines; City Code; City ordinances; City Engineering Standards; Manual on Uniform Traffic Control Devices (MUTCD); Indian River County standards and specifications; Florida Department of Transportation (FDOT) standards and specifications.

TRAINING AND EXPERIENCE

Graduation from high school or equivalent certification, supplemented by four (4) years paid fulltime experience performing construction inspection of public improvements (roads, bridges, storm drains, curbs, public or private buildings, facilities, utilities, etc.). Must possess a valid Florida Motor Vehicle Operators License. Individual licensed and experienced in any the following Florida Building Codes is desirable:

- | | | |
|---------------------|---------------|-----------------|
| - Building | - Residential | - Accessibility |
| - Mechanical | - Plumbing | - Fuel Gas |
| - Existing Building | - Electrical | |

PHYSICAL ABILITIES

Field work is performed in an outdoor environment and will require operation of a vehicle. May be required to perform a full range of motion with lifting and/or carrying items weighing up to 50 pounds. Some work is performed in a standard office environment. May require frequent sitting and continuous operation of a personal computer.

- Ability to work outdoor setting and perform inspection, which may require climbing ladders, standing, crawling, kneeling, or sitting for extended periods of time and the lifting, carrying, pushing, and/or pulling of objects and materials more than 20 pounds, and traveling to various work locations.
- Regularly required to see, speak, hear, and use hands and fingers to communicate or operate a computer, telephone, or other electronic device.
- Ability to work within a confined area.
- The employee may be subject to work hazards including loud noise, vibrations, moving mechanical parts, exposure to chemicals, fumes, odors, poor ventilation, and oils.
- The physical environment requires the employee to work inside and outside in heat/cold, wet/humid, and dry/arid conditions.
- May be requested to work overtime and weekends for special events.
- Will be required to be a mandatory emergency response personnel responsible for damage assessment with the assistance of other staff and outside vendors.

EQUAL OPPORTUNITY EMPLOYER/VETERANS PREFERENCE/DRUG-FREE WORKPLACE:

The City of Fellsmere is an equal opportunity, and drug-free workplace employer. All applicants receive consideration for employment without regard to age, ancestry, color, marital status, national origin, physical disability, political affiliation, race, religious creed, sex, or other non-merit factors (except as limited by law, personnel rules, collective bargaining agreements, or bona fide occupational requirements). Women and minorities and veterans are encouraged to apply. **Fellsmere participates in E-Verify.**

TEMPORARY EMPLOYMENT AGREEMENT

THIS TEMPORARY EMPLOYMENT AGREEMENT (the "Agreement") made and entered into this 18th day of April 2024, by and between the City of Fellsmere, Florida, a municipal corporation (hereinafter referred to as "City") and Tanner Green (hereinafter referred to as "Engineering Inspector") pursuant to the following terms and conditions:

WHEREAS, the City desires to retain Engineering Inspector as the Public Works Engineering Inspector of the City of Fellsmere; and

WHEREAS, the City expects Engineering Inspector to perform all of the responsibilities and obligations required of the Public Works Engineering Inspector of the City of Fellsmere pursuant to the City Charter, Codes and Ordinances, and applicable State and Federal regulations, and such other duties as may be assigned to him from time to time by the City Manager; and

WHEREAS, the City desires to provide specified terms of employment for the position of Public Works Engineering Inspector

WHEREAS, Engineering Inspector is desirous of entering into an employment relationship with the City of Fellsmere to perform the services required of the Public Works Engineering Inspector.

NOW THEREFORE in consideration of the mutual covenants contained herein, the City and Engineering Inspector, hereby agree as follows:

AGREEMENT

The Parties acknowledge that the above recitals are true and correct and hereby incorporate same as part of this Agreement.

I. APPOINTMENT

1. The City hereby appoints Engineering Inspector as the Public Works Engineering Inspector of the City of Fellsmere effective as of April 22 2024, subject to all terms and conditions of this Agreement. The City confers upon Engineering Inspector all powers, duties and responsibilities as prescribed by the laws of the State of Florida, the City Charter, Ordinances and other Codes of the City of Fellsmere and such other duties as may be assigned to him from time to time by the Public Works Director and/or City Manager. Engineering Inspector accepts employment, upon the terms and conditions set forth herein.
2. Engineering Inspector agrees and understands that he is responsible for maintaining the integrity and reputation of the City of Fellsmere in the conduct and performance of the services rendered pursuant to this Agreement and agrees to comply with all of the policies and procedures of the City. Engineering Inspector agrees that he will perform all of the duties required in this Agreement to the satisfaction of the Public Works Director and City Manager. The Public Works Director and City Manager retain the sole discretion to determine satisfactory performance and conduct.

3. Engineering Inspector agrees and understands that his duties as Public Works Engineering Inspector include, but are not limited to, the following:
 - a. Assisting in the implementation of the City's illicit discharge detection and elimination program and storm water management plan;
 - b. Performing field inspections of construction improvements for compliance with plans and specifications to approve and/or reject all phases of construction;
 - c. Monitoring contractor schedules to ensure milestones are met and resolve potential problems;
 - d. Ensuring proper signage, barricading and construction are according to plans;
 - e. Enforcing City ordinances associated with on-site and off-site improvements;
 - f. Reviewing and evaluating requests for information, third party material testing, change orders, and pay applications for accuracy;
 - g. Coordinating work with City departments and other agencies and attending construction and project related meetings with other agencies, contractors, and utility companies;
 - h. Reviewing construction documents and structural specifications for system and material requirements;
 - i. Preparing reports and documenting project activities and data, scanning field division files, plans, and records;
 - j. Reviewing and approving traffic control plans; ensuring compliance with Manual on Uniform Traffic Control Devices (MUTCD) regulations, inspecting temporary traffic control, road closures and restrictions;
 - k. Processing right-of-way permits; tabulating payments for permits; posting inspection results;
 - l. Verifying permits, license, and insurance certificates;
 - m. Conducting citywide inspections and completing reports for the City's public works;
 - n. Collecting geographic information systems (GIS) data and performing limited survey work; and
 - o. Ensuring compliance with safety procedures.

II. TERM OF EMPLOYMENT

4. This Agreement shall become effective upon execution thereof by the last party signing the same and continue in effect for a period of three (3) years, unless terminated earlier pursuant to the terms of Section VI hereof (the "Initial Term").

III. COMPENSATION AND BENEFITS

5. Salary – Engineering Inspector's salary for the Initial Term of this Agreement shall be \$63,440 per year payable in bi-weekly installments.
6. Insurance - The City hereby agrees to provide and pay for health, vision and dental insurance for Engineering Inspector. Said insurance benefits are to be the same as those available for all other full-time City of Fellsmere employees and are subject to change if said benefits are changed for all other City of Fellsmere employees.
7. Retirement - The City agrees to contribute to its existing 457 Deferred Compensation Plan, or any new retirement/deferred compensation program instituted by the City on behalf of its employees, an amount equivalent to a set percentage of Engineering Inspector's annual salary, said percentage amount being determined by matching the highest percentage amount being contributed on behalf of any full-time exempt employee, up to a maximum amount allowed by law, subject to the extent funds are available pursuant to the annual budget process.
8. Vacation – Engineering Inspector shall accrue vacation benefits at the same rate provided to all employees of the City. Upon termination of employment with the City, Engineering Inspector shall be entitled to compensation for unused accrued vacation time not to exceed the cap pursuant to the City of Fellsmere Standard Operating Procedures, Section 9.04 C, as amended.
9. Sick Leave – Engineering Inspector shall accrue sick leave at the same rate provided to all other employees of the City. Upon termination of employment, Engineering Inspector shall not be entitled to compensation for accrued sick leave pursuant to the City of Fellsmere Standard Operating Procedures, Section 10.04 E, as amended.
10. Disability – Engineering Inspector shall be provided disability benefits to the same degree as provided all other employees of the City.
11. Business Expenses - The City agrees to reimburse Engineering Inspector for all approved expenses incurred by Engineering Inspector directly related to the performance of his duties as the Public Work Engineering Inspector. This provision however shall not be construed to require the City to reimburse Engineering Inspector for expenses which would not otherwise be authorized pursuant to Florida Statutes, City Charter or Ordinances of the City of Fellsmere.
12. Other benefits – Engineering Inspector shall be entitled to other benefits as from time to time may be afforded all other full-time employees of the City of Fellsmere.

IV. REVIEW AND EVALUATION

13. Evaluation - Upon completion of the first (6) month period of employment, Engineering Inspector shall be reviewed by the Public Works Director as to his performance. Thereafter, on the anniversary date of his employment, the Public Works Director may again evaluate Engineering Inspector's performance and may as appropriate recommend increasing the salary and benefits of Engineering Inspector in a manner consistent with his performance evaluation. Any increases in salary or benefits shall be at the sole

discretion of City Manager. Subsequent performance evaluations may be conducted on an annual basis from the anniversary date and then thereafter.

V. FULL TIME EMPLOYMENT

14. Engineering Inspector shall undertake his duties on a full-time basis and shall devote his complete efforts to the business of the City. Engineering Inspector shall dedicate no less than an average of forty (40) hours per week in the performance of his duties as the Public Works Engineering Inspector hereunder.

VI. TERMINATION

15. The Initial Term of this Agreement notwithstanding, either party shall have the right to terminate this Agreement upon providing written notice of termination to the other party. The City may terminate this Agreement without "cause" provided it pays to Engineering Inspector an amount equal to the vacation benefits Engineering Inspector accrued as of the date of termination. Engineering Inspector may terminate this Agreement upon furnishing the City thirty (30) days' written notice but forfeits any and all accrued vacation benefits.
16. Notwithstanding any provision of this Agreement to the contrary, the City may terminate Engineering Inspector, with "cause." The term "cause" means conviction of a felony, conviction of a misdemeanor involving moral turpitude, malfeasance, misfeasance, nonfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform duties and responsibilities set out in this Agreement or violation of generally accepted standards of conduct reasonably expected of any employee of the City. Cause shall also be defined to include "misconduct" as defined in Section 443.036(29), F.S.:

"Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in *pari materia* with each other:

- (a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.
- (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
- (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e)1. A violation of an employer's rule, unless Engineering Inspector can demonstrate that:

- a. He or she did not know, and could not reasonably know, of the rule's requirements;
- b. The rule is not lawful or not reasonably related to the job environment and performance; or
- c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

17. If Engineering Inspector is terminated for "cause", the City shall not be obligated to pay any compensation or benefits, including vacation, to Engineering Inspector whatsoever except those wages and benefits required by law.

VII. INDEMNIFICATION

18. To the extent required and otherwise allowed by law, but subject to the limitations set forth in Section 768.28, Florida Statutes, and as otherwise may be limited or prohibited by law, and without waiving the sovereign immunity of the City Council or the City, the City Council agrees that the City shall defend, hold harmless and indemnify Engineering Inspector against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission committed by Engineering Inspector within the scope of his employment hereunder as Public Works Engineering Inspector provided that he timely reports the same to the City Manager and cooperates fully and honestly in the City's defense thereof. The City Council may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon, subject to reimbursement by Engineering Inspector if required by law. Said indemnification shall extend beyond termination of employment and expiration of this Agreement to provide full and complete protection to Engineering Inspector by the City for any acts or omissions committed within the scope of his employment hereunder as Public Works Engineering Inspector, regardless of whether the notice or filing of a lawsuit for such tort, professional liability, claim, demand, or other legal action occurs during or following Engineering Inspector's employment with the City. The provisions of this paragraph shall not apply to any claim, demand, suit or cause brought or asserted against Engineering Inspector for his acts or omissions committed while acting outside the course and scope of his employment under this Agreement or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, property or civil rights.

VIII. GOVERNING LAW

19. This Agreement shall be subject to, construed and enforced in accordance with the laws of the State of Florida without regard to conflicts of laws. Notwithstanding this, if judicial proceedings are necessary to enforce or interpret the provision hereof, venue for any such judicial proceedings between the parties shall be set in the State Courts of Florida with

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.

XIV. WAIVER

25. 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.

XV. FISCAL NON-APPROPRIATION CLAUSE

26. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated without penalty or charge to the City.

XVI. MODIFICATIONS; EXTENSIONS

27. This Agreement may not be modified or extended, in whole or in part, except by a written agreement signed by the parties.

ENGINEERING INSPECTOR UNDERSTANDS THAT WARREN W. DILL AND D. JOHNATHAN RHODEBACK OF DILL, EVANS & RHODEBACK ARE LICENSED ATTORNEYS IN THE STATE OF FLORIDA AND THAT THEY ARE REPRESENTING THE CITY AND NOT THE ENGINEERING INSPECTOR IN THE AGREEMENT. ENGINEERING INSPECTOR IS ADVISED THAT THIS IS A LEGALLY BINDING CONTRACT AND THAT ENGINEERING INSPECTOR SHOULD SEEK LEGAL COUNSEL TO REPRESENT HIM BEFORE SIGNING THE AGREEMENT.

IN WITNESS WHEREOF, the City of Fellsmere has caused this Agreement to be executed by its Mayor and duly attested by its City Clerk, and Engineering Inspector has executed this Agreement.

City of Fellsmere,
a Florida municipal corporation

Joel Tyson, Mayor

Print Name: Tanner Green

Date: _____

Date: _____

[ATTESTATION ON NEXT PAGE]

ATTEST:

Maria Suarez-Sanchez, CMC, City Clerk

(S E A L)

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

Meeting Date: April 18, 2024

Agenda Item No. 13(g)

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

SUBJECT: Discussion of mobile food trucks in Fellsmere

RECOMMENDED MOTION/ACTION: Provide direction for code changes to regulate mobile food trucks in Fellsmere

Approved by City Manager *Mauro T. ...* **Date:** 4-10-24

Originating Department:	Costs: Funding Source: Acct. #	Attachments: Draft Regulations
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 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 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 State of Florida has pre-empted certain regulatory aspects on mobile food trucks. These are different than food trucks that choose to stay in one spot permanently. The City already has codes for these and will be amending shortly to increase the spacing requirements as previously directed by Council.

For mobile food trucks, the state pre-emption maintains a local government's ability to apply reasonable zoning restrictions. See attached Florida Statute excerpt. These can include allowable zoning districts in which they may locate or spacing requirements. The City is specifically not allowed to require a separate license, registration, or permit. As such, any regulation done under city rules may not be able to recoup cost of such zoning review.

Draft regulations are attached for review and direction.

Of note, these regulations seem to clearly address restaurants who use mobile food vending units as kitchens in support of the restaurant. Numerous restaurants and bars fall under this state statute and are likely operating in conflict with such regulations.

Meeting Date: April 18, 2024

Agenda Item No.

City of Fellsmere City Council
Agenda Request Form – continued

EE. *Mobile food vending units as accessory use*

1. Mobile food vending unit as an accessory use shall only be allowed within the following zoning districts: C-1, C-2, RPO, I, PIN, and PDD and must be located on a developed property.
2. To qualify as an accessory use, the mobile food vending unit must not park overnight at the developed commercial property and may only be open for business at the same times as the business located on the developed commercial property.
3. Shall require certificate of zoning as set forth in Section 17.21.A of the Land Development Code prior to operation. This is not a permit or registration but review for compliance with these rules.
4. The following conditions shall be demonstrated to the City of Fellsmere to receive a certificate of zoning for mobile food vending units operated as accessory uses:
 - a. Shall not be located closer than 1,500 feet from another accessory or principal mobile food vending unit.
 - b. No signage beyond that which may appear on the mobile food vending unit except for one (1) A-frame sign located on the same property as the mobile food vending unit.
 - c. Parking requirements shall be five spaces for each separate mobile food vending unit placed on the property in addition to the required parking for all other permitted uses on the site. Location of mobile food vending unit may not result in the loss of parking below the code required minimum parking unless otherwise approved by the City Manager.
 - d. The location of the mobile food vending unit shall not block any ingress/egress, building entrance or emergency exits or conflict with required fire access, intersection site distance requirements, or required access for the principal use or be within a public or private road right-of-way or easement.
 - e. Shall operate only during the business hours of the principal business located on the property.
 - f. No outdoor seating is allowed. Food and beverages for sale are for take-away service only.
 - g. No temporary or permanent furniture or improvements on site shall be allowed in support of the mobile food vending unit except for temporary trash/recycling receptacles.
 - h. No alcohol shall be sold.
 - i. Permission from property owner to locate on site.
 - j. Proof of licensing by the State.
 - k. When operating on city-owned land, a mobile food vendor must maintain insurance as required by the City and naming the City of Fellsmere as additional insured.

City of Fellsmere City Council
Agenda Request Form – continued

509.102 Mobile food dispensing vehicles; temporary commercial kitchens; preemption.–

(1)(a) As used in this section, the term “mobile food dispensing vehicle” means any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(b) As used in this section, the term “temporary commercial kitchen” means any kitchen that is a public food service establishment used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle-mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal. Such kitchens are subject to all provisions of this chapter except as may be provided herein. The term does not include a tent.

(2)(a) Regulation of mobile food dispensing vehicles, and temporary commercial kitchens, involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local governmental entity may not require a separate license, registration, or permit other than the license required under s. 509.241, or require the payment of any license, registration, or permit fee other than the fee required under s. 509.251, as a condition for the operation of a mobile food dispensing vehicle or temporary commercial kitchen within the entity’s jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles or temporary commercial kitchens from operating within the entirety of the entity’s jurisdiction.

(b) Any mobile food dispensing vehicle or temporary commercial kitchen that is operated on the same premises as and by a separately licensed public food service establishment may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen.

(3)(a) A temporary commercial kitchen may be used in conjunction with a permanent food service establishment licensed under this chapter for the purpose of supplementing the kitchen operations of the licensed permanent food service establishment. A temporary commercial kitchen may operate in this capacity as follows:

1. On the premises of the licensed permanent food service establishment for 60 consecutive days. Upon request of the operator of a temporary commercial kitchen, the division may grant one extension of up to 60 additional consecutive days.

2. During a period of renovation, repair, or rebuilding, on the premises of the licensed permanent food service establishment or off the premises within the line of sight of, and not to exceed 1,320 feet from, the licensed permanent food service establishment for 120 consecutive days. The division may exercise discretion to grant an additional extension of time upon a reasonable and reliable demonstration by the licensed permanent food service establishment that additional time is needed to complete the renovation, repair, or rebuilding.

(b) If a permanent food service establishment licensed under this chapter, or the land upon which that establishment is sited, is rendered uninhabitable due to a natural disaster that is the subject of a declared state of emergency, a temporary commercial kitchen may operate on the premises of, or as near as reasonably practicable to, the location of the licensed permanent food service establishment. A temporary commercial kitchen may

Meeting Date: April 18, 2024

Agenda Item No.

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

operate in this capacity only during the period of repair and rebuilding of the permanent establishment with which it is associated. The operators of a temporary commercial kitchen operating in this capacity must notify the division of the kitchen's location and renew the notification every 90 days for the duration of its operation.

(c) Except as authorized under paragraphs (a) and (b), a temporary commercial kitchen may not operate in one location for longer than 30 consecutive days. The operators of a temporary commercial kitchen must notify the division within 48 hours after commencing operation in a location.

(4) This section may not be construed to affect a municipality, county, or other local governmental entity's authority to regulate the operation of mobile food dispensing vehicles or temporary commercial kitchens other than the regulations described in subsection (2).

(5) This section does not apply to any port authority, aviation authority, airport, or seaport.

History.—s. 75, ch. 2020-160; s. 2, ch. 2023-48.

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

Meeting Date: April 18, 2024

Agenda Item No. 13(h)

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

SUBJECT: Code Enforcement.Foreclosures

RECOMMENDED MOTION/ACTION: Provide direction on required action for outstanding code enforcement cases.

Approved by City Manager  Date: 4-9-24

Originating Department:	Costs: \$ NA Funding Source: Acct. #	Attachments: Case Status List
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.

Summary Explanation/Background: On occasion, staff requests direction from Council on pending code cases. The last code status presentation was in November 2020. The attached list of outstanding code cases provides a synopsis of the status of each case and designation as to whether the property is homestead. All cases shown have been ordered by the Special Master and remain either noncompliant or have not paid the required fines/fees. Staff is seeking direction to foreclose on certain properties listed therein.

FORECLOSE - Seek foreclosure to take ownership of property or to at least recoup costs and fines. If foreclosed by City, cost of City Attorney would be borne (approx.. \$5,000), and then City would have to resolve violation (if demolition approx. \$12,000). If not foreclosed by City, property would still be in noncompliance but simply owned by a new owner. New owner would inherit code enforcement lien and requirement to resolve. In most cases, no bidders would exist at the foreclosure auction as the fines owed would be beyond value of property.

COURT ORDER – Seek court action to foreclose on other real or personal property of owner to recoup costs. This would still cost around \$5,000 and depending on property foreclosed, may or may not be able to sell to recoup costs. Code violation would still exist and case would have to start over. This course of action is taken on homestead properties.

WORK WITH OWNER – Continue to work with owner to resolve with more active communication by setting a specific schedule and tasks for compliance. Bring to Council if not resolved.

Items in dark shade and bold font are requested for direction on foreclosure. Three of the properties are homestead and would require a court money order judgment.

Status noted below may be updated as new information comes to light.

CASES REQUIRING COUNCIL DIRECTION

Case Number	Date Violation Issued	Location of Violation	Status/Description	Council Direction w/ Notes	Homestead
2016-019 2017-031	5/10/2016	121 N. Elm	BTR, destruction alley, outdoor storage. Ordered 6/22/16. Liened 3/27/17. BK2999, PG1628	No contact with owners since November 2018. Property is in compliance but has not paid fine.	N
2010-009 2021-25	11/8/2010 7/27/2021	191 S. Bay	Unperm fence, carport and other. Ordered 11.30.10. Liened 9.7.11. BK2521, PG1628	Owner is in compliance but has stopped paying fine. MONEY JUDGEMENT COMMENCED BY CITY ATTORNEY (Homestead).	Y
2015-13 2016-008	3/13/2015 2/26/2016	198 S. Cypress	Junk. Ordered 4/27/16. Liened 2/7/17. BK2999, PG1563 Junk. Ordered 4.24.15. Liened 3/17/17. BK2017, PG2323. Fine not paid. Repeat Violator.	OWNER has regressed into noncompliance.	Y
2016-017	5/10/2016	229 S. Willow	Unpermitted foundations. Ordered 7/27/16. Liened 3/27/17. BK2999, PG1599	OWNER has made no progress toward compliance. Continued violations with living in a shed and other violations.	Y
2016-037	8/18/2016	90 N. Hickory	Unperm. Various. Ordered 10/26/16. Liened 11/7/17. BK3161, PG547	OWNER sold property. New owner has made no progress toward compliance.	N
2015-11	3/13/2015	171 S. Magnolia	Unpermitted carport. Ordered 4.22.15. Liened 1/6/16. BK2903, PG1578	No contact with owner since 2021. OWNER has not paid fines.	N
2015-24	8/4/2015	177 S. Oleander	Delap, junk, unpermitted work (elec, etc.). Ordered 4/27/16. Liened 3/27/17. BK3034, PG1294	No contact with owner since March 2018. OWNER has made no progress toward compliance.	N
2016-015	5/10/2016	79 S. Orange	Unpermitted work (renovations): Ordered 3/22/17. Liened 3/29/2019. BK3194, PG2166	No contact with owner since August 2016. OWNER has indicated a demo permit will be sought. No action to date.	N
2018-025	5/3/2018	155 S. Willow	Unperm (shed/garage): Ordered 8/8/18. Liened 3/29/2019. BK3194, PG2130.	No contact with owner since September 2018. OWNER has made no progress toward compliance. No garage is falling down.	Y
2018-002	1/16/2018	1004 Lincoln St.	Trash/delap: Ordered 8/8/18. Liened 3/29/2019. BK3194, PG2114.	OWNER has made repairs without permit and is not renting without BTR. Court appeal in favor of City. Awaiting court order.	Forclosed
2018-027	5/14/2018	1034 Grant St.	Delap: Ordered 8/8/18. Liened 3/29/2019. BK3194, PG2134.	No contact with owner since September 2018. OWNER has made no progress toward compliance and is now allowing someone to live there. Should be condemned.	N
2016-004	2/26/2016	74 S. Elm	Unpermitted work: Ordered 4/27/16. Liened 3/27/17. BK2999, PG1593	Council previously directed foreclosure. OWNER now working toward compliance. No fees or fines have been paid.	N
2015-026	8/4/2015	56 S. Elm	Junk. Ordered 8.26.15. Liened 5/6/16. BK2932, PG1187. Case still open. Junk has returned. Fine still to be paid.	No contact with owner December 2015. OWNER has made no progress toward compliance.	Y
2018-007	1/18/2018	45 S. Oak St.	Nuisance: Ordered 5/30/18. Liened 3/29/2019. BK3194, PG2118.	No contact with owner since July 2018. Owner has made no progress toward compliance.	Y
2018-053	8/27/2018	1075 Lincoln St.	Tent living: Ordered 5/1/2019. Liened 6/10/2020. BK3308, PG634	Camper still on property and now a grass issue. Fine not paid.	N
2017-012	4/17/2017	186 S. Lime	Unpermitted work (porch/fence): Ordered 6/28/2017. Liened 3/29/2019. BK3194, PG2154.	No contact with owner since July 2017. Owner has removed unpermitted porch but not addressed unpermitted fence.	N
2017-017	6/20/2017	SE State. Willow – Unaddressed lot	Unlic. Veh./junk: Ordered 7/26/2017. Liened 3/29/2019. BK3194, PG2158	No contact with owner since July 2017. Owner has made progress but is still not compliant.	N
2017-031	10/30/2017	115 & 121 N. Elm	BTR, damage to city property: Ordered 1/24/18. Liened 3/29/2019. BK3194, PG2170.	No contact with owners since November 2018. Property is in compliance but has not paid fine.	N

2015-25	8/4/2015	1008 Vernon	Unpermitted windows, doors, etc. Ordered 8.26.15. Liened 1/6/16. BK2903, PG1584.	Owner is renting unit and no effort toward compliance. Now new violations for DW and shed living.	N
2015-07	3/13/2015	246 S. Bay	Exp. Perm (shed). Ordered 5/25/16. Liened 3/27/17. BK2999, PG1566	No contact with owner since November 2016. Owner has made progress toward compliance.	N
2018-014	1/24/2018	147 N Magnolia St.	Exp perm(re-roof): Ordered 5/30/18. Liened 3/29/2019. BK3194, PG2126	No contact with owner since July 2018. Owner has made no progress toward compliance.	N
2019-009	1/14/2019	122 S. Myrtle St.	Delap, nuisance: Ordered 3/12/2019. Liened 6/10/2020. BK3308, PG638.	Compliant. Abatement requested and needs processed.	N
2019-003	1/29/2018	70 S. Cypress St.	Exp perm (fill and excavation): Ordered 1/30/2019. Liened BK3213, PG2231.	Compliant. Abatement approved. Fine not paid.	N
2020-01	8/5/2020	1028 East Grant Av.	Delap: SM Ordered 10/28/2020.	Compliant but now grass. Abatement requested.	N
2011-041	8/1/2011	162 S. Magnolia	Abated by Council. No work performed to make compliant as of 3/26/24; however, Owner indicates saving to demo MH.	Unpermitted siding. Ordered 9.8.11. Liened 2.7.12. BK2553, PG931	N
2021-30	3/17/2021	16 N Cypress	Delap Fence, Shed Per, Parking Grass, Duplex conversion.. Ordered 3.23.22. Not Liened	Efforts to be compliant but has not closed out required permits or paid fines.	N
2021-10 & 30	3/12/2021	12910 100 PL	Unperm Work (Shed) Junk, Grass. Ordered 10.16.22. Not liened.	Compliant. Abatement requested and needs processed.	N
2022-10	10/12/2022	155 S. Orange	Unperm work (screen porch & DW), Junk/Debris, Unlic vehicles/improper parking. Ordered 12.28.22. Not Liened.		N
2021-33	11/4/2021	130 N Oleander	Unperm Work Siding on shed. Ordered 4/8/22. Not Liened.	No contact with owner. Owner has made no progress toward compliance.	N
2021-23	7/13/2021	12985 93rd	ROW No Permits, Land Clearing. Ordered 3/10/22. Not liened. Daily fines abatement has expired.	Respondent working with County for compliance that will cover City violation as well.	N
2021-22	6/22/2021	147 S Orange	MH Dilap, Shed Dilap, Fence, Debris, Grass, wáter Box Stop Pin, Trailer.	Did this go to SM? Where is Order if it did. If not, this needs to go ASAP (see photos).	N
2021-18	6/14/2021	230 S Bay	Grass, Delap Mobile Home, Debris, Utility Pole wires Building Security Ordered 1.26.22. Not Liened.	Daily fines tolled until 2/17/23. House is being maintained.	N
2021-17	5/18/2021	163 S. Broadway	Unpermitted work, pavers, shed, walk way, porch. Ordered 7.27.22. Not Liened.	No contact with owner. Owner has made no progress toward compliance.	N



163 S. Broadway - unpermitted



147 S. Orange - delapidated



16 N Cypress – duplex conversion/unpermitted



70 S. Cypress – fill



1008 Vernon – unpermitted



1075 Lincoln – tent living



56 S. Elm - junk



1034 Grant – delapidated



155 S. Willow – delap garage



198 S. Cypress – scrap dealer/junk

**City Council
Agenda Request Form**

Meeting Date: April 18, 2024

Agenda Item No. 13(i)

- 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: Quarterly Update to the ARPA Funding List

RECOMMENDED MOTION/ACTION: Approve ARPA Amendment.

Approved by City Manager *M. Holtz* Date: 4-10-24

Originating Department: POLICE	Costs: See Attachment Funding Source: ARPA Acct. #	Attachments: ARPA Funding List
Department Review: <input type="checkbox"/> City Attorney _____ <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input checked="" type="checkbox"/> FPD _____	<input type="checkbox"/> Public Works _____ <input checked="" type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____: Please initial one.

Summary Explanation/Background:

The City of Fellsmere has received an award of \$2,852,362 from the Federal government as part of the American Rescue Plan Act. With the Council election to treat all funds as "Lost Revenue" the City no longer has to track the use of funds by any one of the four original criteria. Funds can now be used for any reason except debt payments, pension payments, or reserves. With prior update, Council authorized Staff to also use ARPA for allowable general staff costs to ensure funds are obligated prior to 12/31/24. This past quarter was the first to use ARPA for staff costs which are reflected in the attached table. Staff will continue to reflect the ARPA list for transparency. Changes in this update include:

- Update "spent to" numbers
- Increase item for last full parcel purchase on 97th outside of grant to allow resale.
- Delete Old Scholl AC and address via Infrastructure as they fail.
- Delete Heavy Equipment Trailer since not needed at this time.
- Increase N Broadway Alley.
- Reduce Kentucky Greenway Purchases and add Sr. League purchase since final sale price from State has been received.
- Reduce CR512 Left Turn to balance ARPA budget. Additional funds from Infrastructure if needed.
- Reflect finds spent on staff costs.
- Change Color Coding to easily see items that are DONE versus those that are simply obligated.

As time approaches the deadline to obligate funds (12/2024), the ARPA funding list must balance to available funds. At this time, there is about \$450,000 flexibility in funding remaining.

ARP Project List by Local Priority

2024-04-11

Funding Priorities	ARP Funds Spent To Date	Total Project Cost	ARP	Grant/Local	Notes
Miscellaneous					
Police & Public Works Hazard Pay	\$ 33,582	\$ 33,582	\$ 33,582	NA	DONE
Economic Development					
S. Hickory Land Purchase	\$ 151,858	\$ 151,858	\$ 151,858	\$ -	DONE - reimbursed upon sale
FACT Resource Center	\$ 126,481	\$ 250,000	\$ 250,000	TBD	FACT Initiative seed money
Web Site Update	\$ 16,250	\$ 20,000	\$ 20,000	\$ -	ARPA
Police					
In-car camera Storage/Server	\$ 15,105	\$ 15,105	\$ 15,105	\$ -	DONE
Field Laptops	\$ 16,944	\$ 16,944	\$ 16,944	\$ -	DONE
Body Cameras	\$ 59,419	\$ 59,419	\$ 59,419	\$ -	DONE - recurring \$10,000 annual fee (starts 2027)
Rapid ID System	\$ 2,149	\$ 2,149	\$ 2,149	\$ -	DONE
New Roof for PW/PD Bldg.	\$ 19,800	\$ 213,800	\$ 19,800	\$ 194,000	DONE
Ballistic Shields	\$ 123	\$ 123	\$ 123	\$ -	DONE
SWAT Gear	\$ 3,481	\$ 3,481	\$ 3,481	\$ -	DONE
Computer Server	\$ -	\$ 7,325	\$ 7,325	\$ -	ARPA
Police Equipment/Supplies	\$ 27,006	\$ 27,006	\$ 27,006	\$ -	DONE
Recreation					
Recreated Train Village		\$ 600,000	\$ 300,000	\$ 300,000	Not awarded. Use APRA direct.
HVAC Replacements at City Hall	\$ -	\$ -	\$ -	\$ -	Delete - address via Infrastructure as they fail
Old School Impact Windows/Curtains		\$ 665,000	\$ 165,000	\$ 500,000	Special Category awarded
SR. League Soccer Field Rejuvenation	\$ 16,250	\$ 160,000	\$ 160,000	\$ -	Reduced Match Bid

ARP Project List by Local Priority

Funding Priorities	Spent To Date	Total Project Cost	ARP	Grant/Local	Notes
Finance					
Office Equipment, Supplies & Enhancements	\$ 17,983	\$ 30,000	\$ 30,000	\$ -	ARPA
Finance Database System	\$ 87,000	\$ 87,000	\$ 87,000	\$ -	DONE
Project Manager	\$ 11,313	\$ 30,000	\$ 30,000	\$ -	ARPA
Roadways					
CR512 Left Turn		\$ 250,000	\$ 250,000	\$ -	flexible to balance ARPA - add. Funds from infrastructure
W. N Broadway Alley	\$ 33,000	\$ 200,000	\$ 200,000	\$ -	100% funded by City and increase to \$200k
Stormwater					
97th street Lot Purchases	\$ 804,441	\$ 874,000	\$ 874,000	\$ -	Increase advance purchase of lots that will be resold
Kentucky Greenway & Sr. League Purchases		\$ 6,000	\$ 6,000	\$ -	Purchase State Lands to support local grants
Heavy-Equipment-Trailer	\$ -	\$ 20,000	\$ -	\$ -	Delete - address via Infrastructure when needed
Public Works					
New Toolbox and Tools for shop	\$ 8,949	\$ 8,949	\$ 8,949	\$ -	DONE
PW 2 way radios	\$ 15,000	\$ 15,000	\$ 15,000	\$ -	DONE
City Hall Technology	\$ 64,655	\$ 65,000	\$ 65,000	\$ -	ARPA for Conference Rooms and Auditorium
PW Equipment/Supplies	\$ 4,790	\$ 30,000	\$ 30,000	\$ -	Reduce to bakance ARPA
TOTAL	\$ 1,535,580	\$ 3,746,741	\$ 2,827,741	\$ 994,000	
ARPA Funds spent on Staff Costs			\$ 1,035,858	Reimbursed over time	
Grand Total			\$ 2,368,578.87	Total less Reimbursements	
			\$ 2,852,362	Allocation	
			\$ 1,905,416	Obligated/Spent	

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


Meeting Date: April 18, 2024

Agenda Item No. 13(j)

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

SUBJECT: Purchase of State-owned lands in support of Kentucky Stormwater Greenway and Sr. League Park.

RECOMMENDED MOTION/ACTION: Approve Resolutions 2024-39 and 2024-40 and Authorize Mayor to execute contract for the purchase of State-owned lands in support of Kentucky Stormwater Greenway and Sr. League Park subject to Attorney approval of contract.

Approved by City Manager  Date: 4-16-24

Originating Department:	Costs: \$3,000 Funding Source: ARPA Acct. #	Attachments: Senior League Parcels R-2024-39 Kentucky Ave. Parcels R-2024-40
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.

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 State of Florida has agreed to sale TIFF State owned lands to Fellsmere in support of the Kentucky Stormwater Greenway and Sr. League Park. Each has been priced at only \$1,500 or \$3,000 for both. Staff recommends purchase at these extremely favorable prices paid by ARPA for ease.

The State has not provided the purchase contract yet, and it is not expected to be amendable by the City. Staff asks for approval subject to City Attorney approving contract.

**RESOLUTION
NO. 2024-39**

A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AUTHORIZING THE PURCHASE OF LAND LOCATED AT AND INCLUDED WITHIN THE SENIOR LEAGUE FIELD FROM THE STATE OF FLORIDA, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF STATE LANDS, FOR A COST OF \$1,500.00 PURSUANT TO THE CONTRACT ATTACHED HERETO AND AUTHORIZING THE MAYOR TO SIGN THE CONTRACT; PROVIDING FOR RATIFICATION; PROVIDING FOR APPROVAL OF CONTRACT; AUTHORIZATION; AND PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the State of Florida, Department of Environmental Protection, Division of State Lands, DSL-2471 (hereinafter "State of Florida"), has offered to sell land to the City located within the Senior League Field, more particularly described in the Contract attached hereto as Exhibit "A" (the "Contract", with legal description and graphic of the land) for the purchase price of \$1,500.00; and

WHEREAS, Mayor, Joel Tyson, is hereby authorized to sign the Contract on behalf of the City of Fellsmere and the City Department of Finance is authorized to pay \$1,500.00 to the State of Florida for purchase price of the land as provided in the Contract; and

WHEREAS, as a requirement for purchasing the land, the State of Florida has required the City to prepare this Resolution authorizing the signing of the Contract for the acquisition of the land; and

WHEREAS, the City Council at a public meeting determined that the purchase of the land was necessary and appropriate and in the best interest of the health, safety and welfare of the residents of the City.

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 of the City of Fellsmere, Florida.

SECTION 2. APPROVAL OF CONTRACT. The City Council of the City of Fellsmere, Florida approves the Contract attached hereto as Exhibit "A" for the sale and purchase of land and the purchase price as set forth therein.

SECTION 3. AUTHORIZATION. Mayor, Joel Tyson of the City of Fellsmere, Florida is authorized to sign the Contract attached hereto as Exhibit "A" and the City Department of Finance is authorized to pay the State of Florida \$1,500.00 for the purchase of the land.

SECTION 4. CONFLICT. All Resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 5. 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 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

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

Mayor, Joel Tyson	_____
Vice Mayor, Fernando Herrera	_____
Councilmember Inocensia Hernandez	_____
Councilmember Gerald W. Renick	_____
Councilmember 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 Sanchez-Suarez, CMC, City Clerk

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
CONTRACT FOR SALE AND PURCHASE
AND
DEPOSIT RECEIPT

THIS Contract for Sale and Purchase and Deposit Receipt (“Contract”) is made this _____ day of _____, 2024, by and between SELLER and BUYER as follows:

SELLER:

Board of Trustees of the Internal Improvement Trust Fund of the State of Florida by and through its agent the Division of State Lands of the State of Florida Department of Environmental Protection ("DEP")

ADDRESS:

State of Florida Department of Environmental Protection
Division of State Lands
Bureau of Real Estate Services, MS115
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

BUYER:

Name: City of Fellsmere, Florida, a Florida municipal corporation created pursuant to the laws of the State of Florida
Address: 22 South Orange Avenue
Fellsmere, Florida 32948-6700
Phone: (772) 571-1616

1. AGREEMENT TO SELL:

SELLER hereby agrees to sell and BUYER hereby agrees to buy in accordance with this Contract the real property, that is more particularly described in attached EXHIBIT "A" of this Contract (the “Property”).

2. PURCHASE PRICE:

BUYER hereby offers the following purchase price for the Property in the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$1,500.00), which shall be paid in the following manner:

a. Deposit:

BUYER deposits herewith ONE HUNDRED FIFTY AND NO/100 Dollars (\$150.00) in the form of a certified or cashier's check or an irrevocable letter of credit from a financial institution as defined in Section 655.005, Florida Statutes, made payable to the State of Florida Department of Environmental Protection representing ten percent (10%) of the total purchase price as an earnest money deposit (“Deposit”).

b. Balance:

At closing, BUYER shall be required to pay the balance of the purchase price in the amount of ONE THOUSAND THREE HUNDRED FIFTY AND NO/100 Dollars (\$1,350.00) by wire transfer of funds through a Federal Reserve Bank or other immediately available funds

acceptable to SELLER, made payable to the State of Florida Department of Environmental Protection or SELLER'S designated closing agent.

3. TIME OF ACCEPTANCE:

If this offer is not accepted by SELLER, the Deposit shall be returned to BUYER and this offer shall be null and void.

4. CLOSING, EXPENSES AND POSSESSION:

This Contract shall be closed following approval by SELLER, and the deed delivered after execution by SELLER. SELLER will deliver possession of the Property to BUYER at closing. The following are additional details of closing:

a. Time and Place:

The closing shall be on or before ninety (90) days after SELLER'S execution of this Contract. The date, time and place of closing shall be set by DEP.

b. Conveyance:

At closing, SELLER will deliver to BUYER a fully executed quitclaim deed conveying the Property and any improvements in "AS IS, WHERE IS CONDITION," without warranties or representations, subject to a reservation in favor of the SELLER of an undivided three-fourths interest in phosphate, minerals and metals and an undivided one-half interest in all petroleum pursuant to Section 270.11, Florida Statutes.

c. Expenses:

BUYER shall be responsible for and pay all closing costs associated with the Property including, but not limited to, advertising costs, appraisal costs, survey costs, documentary stamp tax on the deed, recording fees, abstract or title insurance fees, attorneys' fees and real estate brokerage fees. BUYER shall reimburse DEP at closing for any closing costs that are initially paid for by DEP. Any costs of sale incurred by SELLER or by other parties on behalf of SELLER shall be paid by separate certified or cashier's check made payable to the State of Florida Department of Environmental Protection or an escrow agent designated by DEP at the time of closing. SELLER may require that the closing be processed by and through a title insurance company or other closing agent, designated by DEP, and BUYER shall pay any costs charged by such company or agent for this closing service. If BUYER obtains a survey of the Property, nothing contained therein shall affect the purchase price or terms of this Contract.

5. REAL ESTATE TAXES, EASEMENTS, RESTRICTIONS AND ENCUMBRANCES:

BUYER agrees to pay all outstanding real estate taxes. BUYER agrees to take title to the Property subject to any outstanding taxes, special liens or assessments, comprehensive land use plans, zoning, restrictions, prohibitions, permits, leases, tenancies and encumbrances affecting the Property and other requirements or liens imposed by governmental authority; restrictions, qualifications and matters appearing on the plat or otherwise common to the subdivision, restrictive covenants, public utility easements and all outstanding easements, reservations and other interests.

6. WETLANDS:

Any wetlands on the Property may be subject to the permitting requirements of DEP, the applicable water management district or any other applicable permitting entity.

7. CONDITION OF THE PROPERTY:

BUYER acknowledges that he has inspected the Property and agrees to accept the Property in "AS IS, WHERE IS CONDITION." SELLER makes no warranties or representations what-so-ever as to the condition of the Property or any improvements located thereon, or the fitness of either for any particular use or purpose.

8. RADON GAS:

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department.

9. RISK OF LOSS:

In the event of any substantial damage to the Property (in excess of \$5,000) between the date of this Contract and the date of closing, SELLER shall have the option of restoring the damaged Property to its condition immediately prior to the occurrence causing the damage, in which event, BUYER shall complete the transaction as originally planned. If these repairs are not completed prior to closing date, closing will be extended until such time as the repairs are completed. If SELLER elects not to restore the damaged Property, BUYER'S sole remedy shall be the right to rescind this Contract by giving written notice to SELLER and to receive a refund of the Deposit or, alternatively, to proceed to closing on the Property, as damaged, without adjustment in the purchase price. In the event of any lesser damage (\$5,000 or less), the parties shall proceed to closing as though no damage had occurred.

10. DEFAULT:

If BUYER fails to close on or before the date set forth in paragraph 4.a. of this Contract, the Deposit may be retained by SELLER as agreed upon liquidated damages, consideration for execution of this Contract and in full settlement of any claims; whereupon this Contract shall be terminated and SELLER and BUYER shall be relieved of all obligations under this Contract; or SELLER, at SELLER'S option, may elect to specifically enforce this Contract. If SELLER fails to deliver the quit claim deed to BUYER on or before the closing date set forth in paragraph 4.a. of this Contract, BUYER may elect to receive the return of the Deposit, whereupon this Contract shall be terminated and BUYER and SELLER shall be relieved of all obligations under this Contract; or BUYER, at BUYER'S option, may seek specific performance.

11. SUCCESSORS:

Upon execution of this Contract by BUYER, this Contract shall be binding upon and inure to the benefit of BUYER, his heirs, successors or assigns.

12. RECORDING:

Neither this Contract nor any notice of it may be recorded in any county by any person.

13. ASSIGNMENT:

This Contract shall not be assigned by BUYER without the prior written consent of SELLER.

14. TIME OF ESSENCE:

Time is of the essence in the performance of this Contract.

15. AMENDMENTS:

This Contract contains the entire agreement and all representations of the parties. No amendment will be effective except when reduced to writing signed by all parties. Any amendments hereto may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature of an amendment hereto delivered by a party by facsimile transmission or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature. Notwithstanding the foregoing, the parties acknowledge that the legal description of the Property is based upon historic chain of title information, without the benefit of a current survey. The parties agree that if, in the opinion of SELLER, it becomes necessary to amend the legal description to correct errors, to more properly describe the Property, or to otherwise revise the legal description of the Property, the legal description to be used in the survey (if any) and in the closing instruments required by this Contract for the Property shall be revised by or at the direction of SELLER, and shall be subject to the final approval of SELLER. Anything to the contrary hereinabove notwithstanding, such a revision of the legal description of the Property shall not require a written amendment to this Contract. In such event, the SELLER'S execution and delivery of the closing instruments containing the revised legal description and the BUYER'S acceptance of said instruments and of the final survey (if any) containing the revised legal description shall constitute a full and complete ratification and acceptance of the revised legal description of the Property by the parties.

16. SURVIVAL:

The covenants of this Contract will survive delivery and recording of deed and possession of the Property.

17. ACCEPTANCE OF OFFER:

SELLER reserves the right to reject this offer. Therefore, this Contract shall not bind SELLER, DEP or the State of Florida in any manner unless or until it is approved and legally executed by SELLER.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE TO FOLLOW

The parties have caused this Contract to be executed on the day and year first above written.

“SELLER”

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE OF
FLORIDA

By: _____
Callie DeHaven, Director
Division of State Lands,
State of Florida Department of Environmental Protection,
as agent for and on behalf of the Board of Trustees of the
Internal Improvement Trust Fund of the State of Florida

APPROVED AS TO FORM AND LEGALITY

By: _____
DEP ATTORNEY

“BUYER”

City of Fellsmere, Florida, a Florida municipal
corporation created pursuant to the laws of the
State of Florida

By: _____
Joel Tyson, Mayor

Return to:
BRES/MS115
Attn: CJ Parks

EXHIBIT "A"

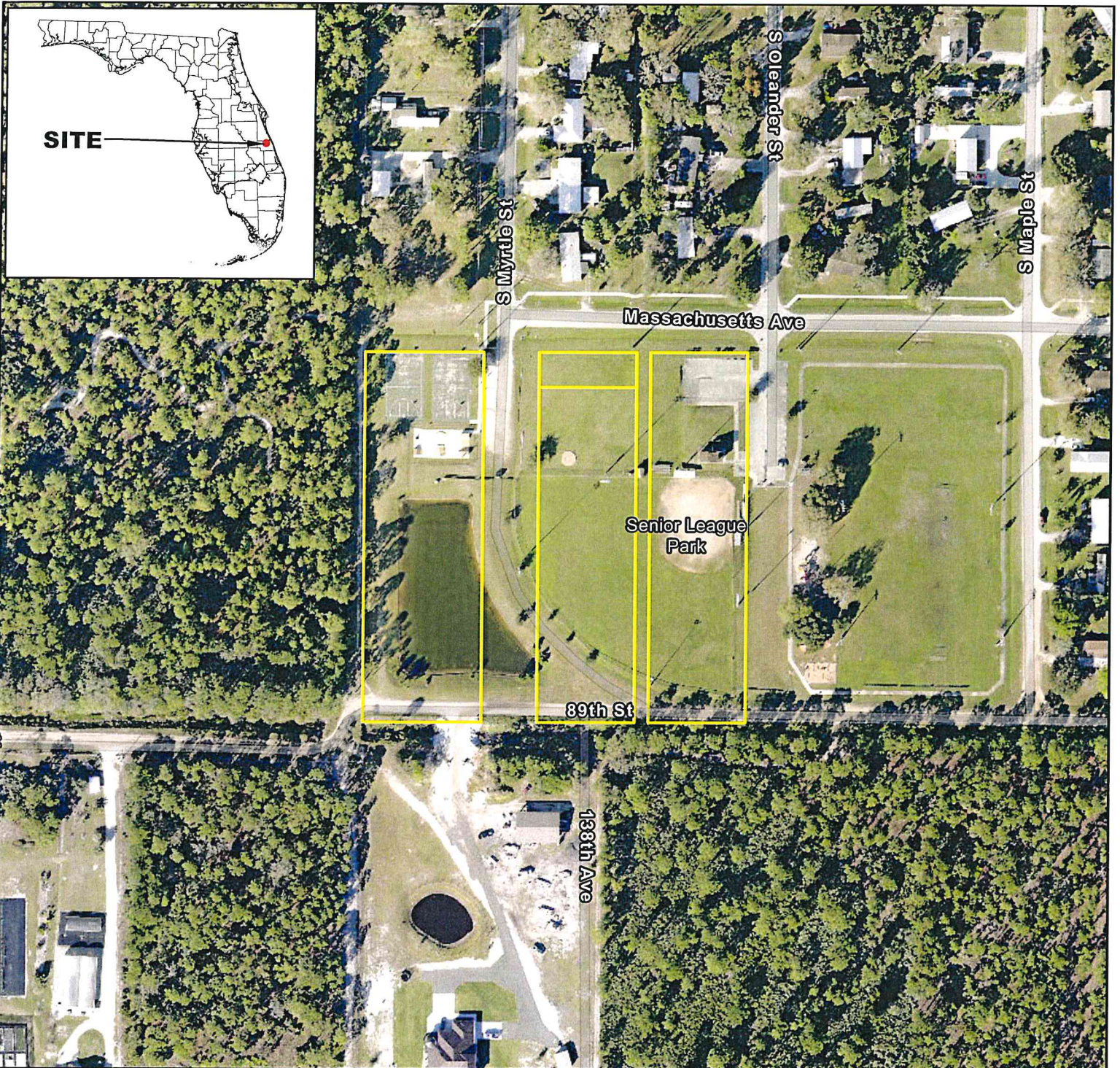
The following lands located in Sections 23 and 26, Township 31 South, Range 37 East, Indian River County, Florida:

Lots 1 through 10, inclusive, of Block 145, Town of Fellsmere, according to the plat filed in the office of the Clerk of the Circuit Court of St. Lucie County, Florida in Plat Book 2, pages 3 and 4 and according to replat filed in the office of the Clerk of the Circuit Court of Indian River County, Florida in Plat Book 8, page 5; all said land lying and being in Indian River County, Florida.

AND

Lot A and Lots 1 through 19, inclusive of Block 144, Town of Fellsmere, according to the plat filed in the office of the Clerk of the Circuit Court of St. Lucie County, Florida in Plat Book 2, pages 3 and 4 and according to replat filed in the office of the Clerk of the Circuit Court of Indian River County, Florida in Plat Book 8, page 5; all said land lying and being in Indian River County, Florida.

BSM: 
DATE: August 18, 2022



**PID Nos: 313700000914400001.0, 313700000914500001.0 &
313700001014400001.0**
Section 0, 23, 26 Township 31 South, Range 37 East
Indian River County, Florida

**RESOLUTION
NO. 2024-40**

A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AUTHORIZING THE PURCHASE OF LAND LOCATED ALONG KENTUCKY AVENUE FOR THE KENTUCKY GREENWAY STORMWATER PROJECT FROM THE STATE OF FLORIDA, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF STATE LANDS, FOR A COST OF \$1,500.00 PURSUANT TO THE CONTRACT ATTACHED HERETO AND AUTHORIZING THE MAYOR TO SIGN THE CONTRACT; PROVIDING FOR RATIFICATION; PROVIDING FOR APPROVAL OF CONTRACT; AUTHORIZATION; AND PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the State of Florida, Department of Environmental Protection, Division of State Lands, DSL-2498 (hereinafter “State of Florida”), has offered to sell land to the City along Kentucky Avenue for the Kentucky Greenway Stormwater Project, more particularly described in the Contract attached hereto as Exhibit “A” (the “Contract”, with legal description and graphic of the land) for the purchase price of \$1,500.00; and

WHEREAS, Mayor, Joel Tyson, is hereby authorized to sign the Contract on behalf of the City of Fellsmere and the City Department of Finance is authorized to pay \$1,500.00 to the State of Florida for purchase price of the land as provided in the Contract; and

WHEREAS, as a requirement for purchasing the land, the State of Florida has required the City to prepare this Resolution authorizing the signing of the Contract for the acquisition of the land; and

WHEREAS, the City Council at a public meeting determined that the purchase of the land was necessary and appropriate and in the best interest of the health, safety and welfare of the residents of the City.

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 of the City of Fellsmere, Florida.

SECTION 2. APPROVAL OF CONTRACT. The City Council of the City of Fellsmere, Florida approves the Contract attached hereto as Exhibit “A” for the sale and purchase of land and the purchase price as set forth therein.

SECTION 3. AUTHORIZATION. Mayor, Joel Tyson of the City of Fellsmere, Florida is authorized to sign the Contract attached hereto as Exhibit “A” and the City Department of Finance is authorized to pay the State of Florida \$1,500.00 for the purchase of the land.

SECTION 4. CONFLICT. All Resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 5. 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 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

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

Mayor, Joel Tyson	_____
Vice Mayor, Fernando Herrera	_____
Councilmember Inocensia Hernandez	_____
Councilmember Gerald W. Renick	_____
Councilmember 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 Sanchez-Suarez, CMC, City Clerk

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
CONTRACT FOR SALE AND PURCHASE
AND
DEPOSIT RECEIPT

THIS Contract for Sale and Purchase and Deposit Receipt ("Contract") is made this _____ day of _____, 2024, by and between SELLER and BUYER as follows:

SELLER:

Board of Trustees of the Internal Improvement Trust Fund of the State of Florida by and through its agent the Division of State Lands of the State of Florida Department of Environmental Protection ("DEP")

ADDRESS:

State of Florida Department of Environmental Protection
Division of State Lands
Bureau of Real Estate Services, MS115
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

BUYER:

Name: City of Fellsmere, Florida, a Florida municipal corporation created pursuant to the laws of the State of Florida
Address: 22 South Orange Avenue
Fellsmere, Florida 32948-6700
Phone: (772) 571-1616

1. AGREEMENT TO SELL:

SELLER hereby agrees to sell and BUYER hereby agrees to buy in accordance with this Contract the real property, that is more particularly described in attached EXHIBIT "A" of this Contract (the "Property").

2. PURCHASE PRICE:

BUYER hereby offers the following purchase price for the Property in the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$1,500.00), which shall be paid in the following manner:

a. Deposit:

BUYER deposits herewith ONE HUNDRED FIFTY AND NO/100 Dollars (\$150.00) in the form of a certified or cashier's check or an irrevocable letter of credit from a financial institution as defined in Section 655.005, Florida Statutes, made payable to the State of Florida Department of Environmental Protection representing ten percent (10%) of the total purchase price as an earnest money deposit ("Deposit").

b. Balance:

At closing, BUYER shall be required to pay the balance of the purchase price in the amount of ONE THOUSAND THREE HUNDRED FIFTY AND NO/100 Dollars (\$1,350.00) by wire transfer of funds through a Federal Reserve Bank or other immediately available funds

acceptable to SELLER, made payable to the State of Florida Department of Environmental Protection or SELLER'S designated closing agent.

3. TIME OF ACCEPTANCE:

If this offer is not accepted by SELLER, the Deposit shall be returned to BUYER and this offer shall be null and void.

4. CLOSING, EXPENSES AND POSSESSION:

This Contract shall be closed following approval by SELLER, and the deed delivered after execution by SELLER. SELLER will deliver possession of the Property to BUYER at closing. The following are additional details of closing:

a. Time and Place:

The closing shall be on or before ninety (90) days after SELLER'S execution of this Contract. The date, time and place of closing shall be set by DEP.

b. Conveyance:

At closing, SELLER will deliver to BUYER a fully executed quitclaim deed conveying the Property and any improvements in "AS IS, WHERE IS CONDITION," without warranties or representations, subject to a reservation in favor of the SELLER of an undivided three-fourths interest in phosphate, minerals and metals and an undivided one-half interest in all petroleum pursuant to Section 270.11, Florida Statutes.

c. Expenses:

BUYER shall be responsible for and pay all closing costs associated with the Property including, but not limited to, advertising costs, appraisal costs, survey costs, documentary stamp tax on the deed, recording fees, abstract or title insurance fees, attorneys' fees and real estate brokerage fees. BUYER shall reimburse DEP at closing for any closing costs that are initially paid for by DEP. Any costs of sale incurred by SELLER or by other parties on behalf of SELLER shall be paid by separate certified or cashier's check made payable to the State of Florida Department of Environmental Protection or an escrow agent designated by DEP at the time of closing. SELLER may require that the closing be processed by and through a title insurance company or other closing agent, designated by DEP, and BUYER shall pay any costs charged by such company or agent for this closing service. If BUYER obtains a survey of the Property, nothing contained therein shall affect the purchase price or terms of this Contract.

5. REAL ESTATE TAXES, EASEMENTS, RESTRICTIONS AND ENCUMBRANCES:

BUYER agrees to pay all outstanding real estate taxes. BUYER agrees to take title to the Property subject to any outstanding taxes, special liens or assessments, comprehensive land use plans, zoning, restrictions, prohibitions, permits, leases, tenancies and encumbrances affecting the Property and other requirements or liens imposed by governmental authority; restrictions, qualifications and matters appearing on the plat or otherwise common to the subdivision, restrictive covenants, public utility easements and all outstanding easements, reservations and other interests.

6. WETLANDS:

Any wetlands on the Property may be subject to the permitting requirements of DEP, the applicable water management district or any other applicable permitting entity.

7. CONDITION OF THE PROPERTY:

BUYER acknowledges that he has inspected the Property and agrees to accept the Property in "AS IS, WHERE IS CONDITION." SELLER makes no warranties or representations what-so-ever as to the condition of the Property or any improvements located thereon, or the fitness of either for any particular use or purpose.

8. RADON GAS:

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department.

9. RISK OF LOSS:

In the event of any substantial damage to the Property (in excess of \$5,000) between the date of this Contract and the date of closing, SELLER shall have the option of restoring the damaged Property to its condition immediately prior to the occurrence causing the damage, in which event, BUYER shall complete the transaction as originally planned. If these repairs are not completed prior to closing date, closing will be extended until such time as the repairs are completed. If SELLER elects not to restore the damaged Property, BUYER'S sole remedy shall be the right to rescind this Contract by giving written notice to SELLER and to receive a refund of the Deposit or, alternatively, to proceed to closing on the Property, as damaged, without adjustment in the purchase price. In the event of any lesser damage (\$5,000 or less), the parties shall proceed to closing as though no damage had occurred.

10. DEFAULT:

If BUYER fails to close on or before the date set forth in paragraph 4.a. of this Contract, the Deposit may be retained by SELLER as agreed upon liquidated damages, consideration for execution of this Contract and in full settlement of any claims; whereupon this Contract shall be terminated and SELLER and BUYER shall be relieved of all obligations under this Contract; or SELLER, at SELLER'S option, may elect to specifically enforce this Contract. If SELLER fails to deliver the quit claim deed to BUYER on or before the closing date set forth in paragraph 4.a. of this Contract, BUYER may elect to receive the return of the Deposit, whereupon this Contract shall be terminated and BUYER and SELLER shall be relieved of all obligations under this Contract; or BUYER, at BUYER'S option, may seek specific performance.

11. SUCCESSORS:

Upon execution of this Contract by BUYER, this Contract shall be binding upon and inure to the benefit of BUYER, his heirs, successors or assigns.

12. RECORDING:

Neither this Contract nor any notice of it may be recorded in any county by any person.

13. ASSIGNMENT:

This Contract shall not be assigned by BUYER without the prior written consent of SELLER.

14. TIME OF ESSENCE:

Time is of the essence in the performance of this Contract.

15. AMENDMENTS:

This Contract contains the entire agreement and all representations of the parties. No amendment will be effective except when reduced to writing signed by all parties. Any amendments hereto may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature of an amendment hereto delivered by a party by facsimile transmission or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature. Notwithstanding the foregoing, the parties acknowledge that the legal description of the Property is based upon historic chain of title information, without the benefit of a current survey. The parties agree that if, in the opinion of SELLER, it becomes necessary to amend the legal description to correct errors, to more properly describe the Property, or to otherwise revise the legal description of the Property, the legal description to be used in the survey (if any) and in the closing instruments required by this Contract for the Property shall be revised by or at the direction of SELLER, and shall be subject to the final approval of SELLER. Anything to the contrary hereinabove notwithstanding, such a revision of the legal description of the Property shall not require a written amendment to this Contract. In such event, the SELLER'S execution and delivery of the closing instruments containing the revised legal description and the BUYER'S acceptance of said instruments and of the final survey (if any) containing the revised legal description shall constitute a full and complete ratification and acceptance of the revised legal description of the Property by the parties.

16. SURVIVAL:

The covenants of this Contract will survive delivery and recording of deed and possession of the Property.

17. ACCEPTANCE OF OFFER:

SELLER reserves the right to reject this offer. Therefore, this Contract shall not bind SELLER, DEP or the State of Florida in any manner unless or until it is approved and legally executed by SELLER.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE TO FOLLOW

The parties have caused this Contract to be executed on the day and year first above written.

“SELLER”

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE OF
FLORIDA

By: _____
Callie DeHaven, Director
Division of State Lands,
State of Florida Department of Environmental Protection,
as agent for and on behalf of the Board of Trustees of the
Internal Improvement Trust Fund of the State of Florida

APPROVED AS TO FORM AND LEGALITY

By: _____
DEP ATTORNEY

“BUYER”

City of Fellsmere, Florida, a Florida municipal
corporation created pursuant to the laws of the
State of Florida

By: _____
Joel Tyson, Mayor

Return to:
BRES/MS115
Attn: CJ Parks

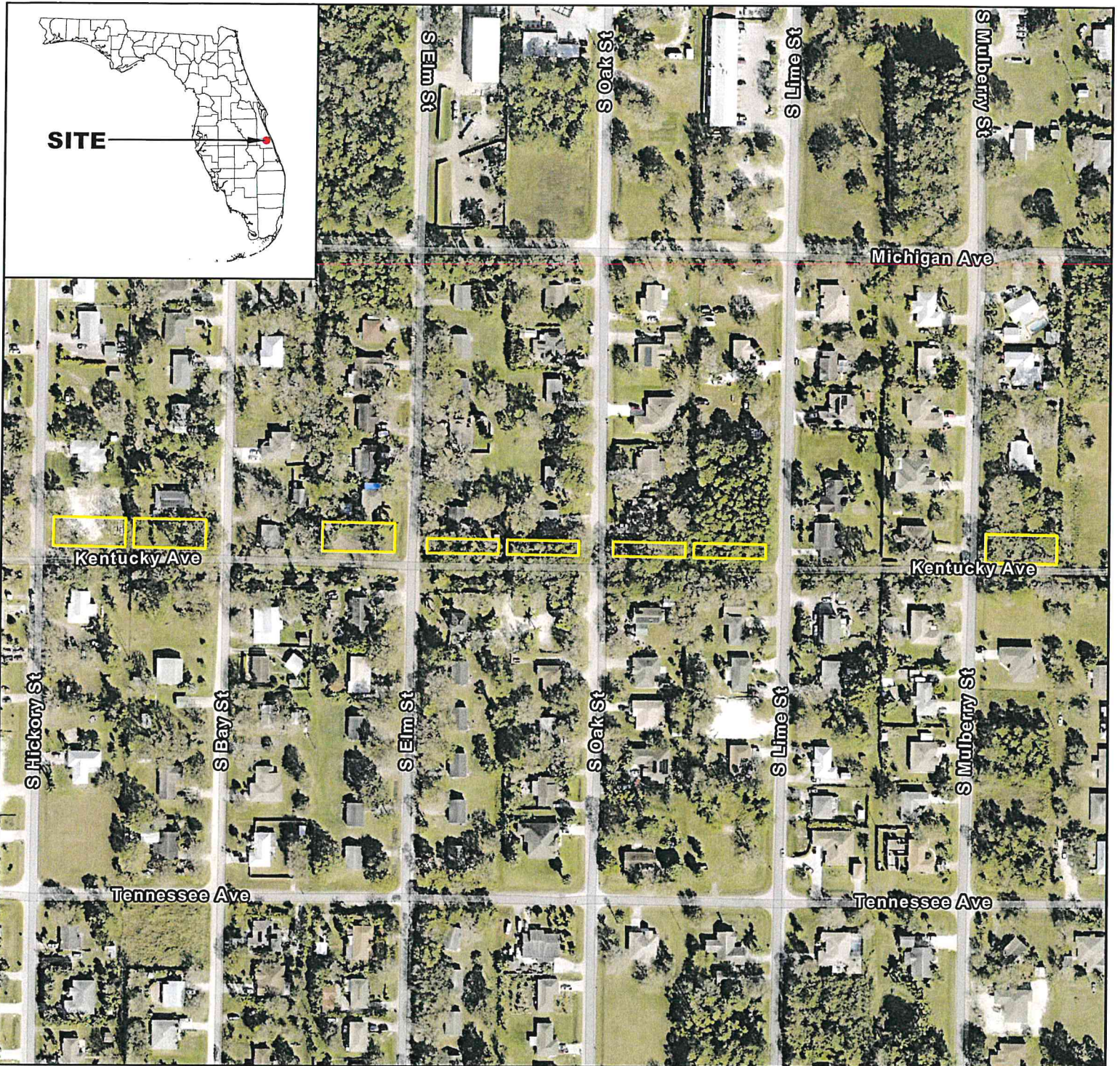
EXHIBIT "A"


The following lands located in Sections 23, 26 and 70, Township 31 South, Range 37 East, Indian River County, Florida:

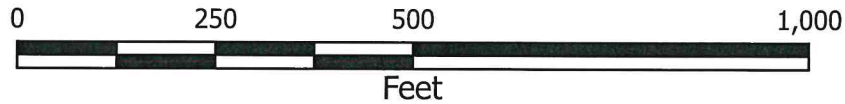
Lots 21 and 22, of Block 15; Lots 20 and 21 of Block 35; Lots 20 and 21 of Block 46; Lots 19 and 20 of Block 55; and Lots 19 through 22, inclusive, of Block 66; all located in Town of Fellsmere, according to the plat filed in the office of the Clerk of the Circuit Court of St. Lucie County, Florida in Plat Book 2, pages 3 and 4 and according to replat filed in the office of the Clerk of the Circuit Court of Indian River County, Florida in Plat Book 8, page 5; all said land lying and being in Indian River County, Florida.

BSM: 

DATE: November 7, 2023



 Subject Parcel



PID #3137000009015000021.0, PID #3137000009035000020.0, PID #3137000009046000020.0,
PID #3137000009055000019.0, & PID #3137000009066000019.0
Sections 23, 26, 70, Township 31 South, Range 37 East
Indian River County, Florida

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

Meeting Date: April 18, 2024

Agenda Item No. 13(k)

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

SUBJECT: Senior League Park Concession Stand Renovation

RECOMMENDED MOTION/ACTION: Award proposal and authorize Mayor to execute contract with Holler Construction, Inc.

Approved by City Manager *Warren Dill* Date: 4-9-24

Originating Department: Grants	Costs: \$138,000.00 Funding Source: ARPA Funds	Attachments: Holler Construction Proposal Proposed Contract
Department Review: <input checked="" type="checkbox"/> City Attorney Warren Dill <input type="checkbox"/> Comm. Dev. _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> City Engineer _____ <input type="checkbox"/> FPD _____	<input checked="" type="checkbox"/> Public Works _____ <input type="checkbox"/> City Clerk _____ <input checked="" type="checkbox"/> City Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>X</u> Please initial one.

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

Summary Explanation/Background:

On March 13, 2024, staff received two proposals for the Senior League Park Concession Stand renovation project. Holler Construction, Inc. was the lowest bidder at \$138,000.00. The second bid was in the amount of \$256,285.00. Staff is recommending approval of Holler Construction. The funds for this project are currently earmarked under ARPA.

BID FORM

SENIOR LEAGUE PARK CONCESSION STAND RENOVATION

To: GRANT ADMINISTRATOR, City of Fellsmere, 22 South Orange Street, Fellsmere, Florida 32948 (Note: As used hereinafter *Bidder* shall mean *Bidder* or *Contractor*, as the case may be, and *City* shall mean *The City of Fellsmere*).

IN COMPLIANCE WITH the City of Fellsmere's Invitation to Bid, dated 2/9/2024 the undersigned, DAVID HOLLEB, HOLLEB CONSTRUCTION proposes and agrees as follows:

1. Being familiar with the local conditions affecting the cost of the Work, and with the contract documents, including the Invitation for Bids, Instructions to Bidders, general and specific specifications, and plans and addenda Nos. _____ on file in the office of the City Clerk of the City of Fellsmere, 22 South Orange Street, Fellsmere, Indian River County, Florida, and in accordance with the provisions of the foregoing documents, the undersigned Bidder proposes to furnish all work and labor, materials and equipment necessary for the following, in accordance with said specifications and plans for **SENIOR LEAGUE PARK CONCESSION STAND RENOVATION**, or as the case may be, for the sum of \$ 138,000.⁰⁰.

It is understood that certain quantities shown in the schedule are approximate only, subject to increase or decrease and for the purpose of bid comparisons for determination of low Bidder. It is further understood that payment will be in accordance with quantities placed in the construction as more specifically provided in the Instructions to Bidders and Specifications included as part of the Contract Documents.

Each bidder must bid on all alternate proposals listed in the specifications. Please circle whether the Alternative is an addition or deduction to the base contract for each Alternative. If no alternates are listed in the specifications, disregard the following blanks:

Alternate No. 1	<u>Spiral Staircase</u>	<input checked="" type="radio"/> add	\$ <u>12,000.⁰⁰</u>
		<input type="radio"/> deduct	
Alternate No. 2	<u>Composite Stair treads</u>	<input type="radio"/> add	\$ <u>3,000.⁰⁰</u>
		<input type="radio"/> deduct	
Alternate No. 3	_____	<input type="radio"/> add	\$ _____
		<input type="radio"/> deduct	

2. To do any extra work which may be ordered by the City or its authorized representative, and to accept as full compensation therefore such prices as may be agreed upon in writing by the City and the Contractor in the Contract Documents.

3. In submitting the bid, it is understood that the City reserves the right to reject any and all bids. It is agreed that this bid may not be withdrawn except as provided in the Instructions to Bidders.

4. This bid is accompanied by a bidder's bond or a certified check, as the case may be, 5 % made payable to the City of Fellsmere in sum of \$ 6,900⁰⁰, which is an amount not less than 5 % of the total amount of the bid. The undersigned deposits said bond or said sum as bid security, which is conditioned on the undersigned entering into a contract with City as specified in the contract documents accompanied by required labor and material and faithful performance bonds with sureties satisfactory to the City and the required certificates of insurance coverage. This bid security shall constitute liquidated damages and shall not be a penalty if the Bidder fails to enter into a contract in accordance with the bid proposal. If the City is required to engage the services of an attorney in connection with the enforcement of this bid, Bidder promises to pay the City's reasonable attorney's fees incurred, with or without suit.

5. Within 20 days from the date of acceptance of this proposal, to execute the contract and to furnish to the City a Performance Bond in an amount equal to 125% of the contract price and a Payment Bond in an amount equal to 100% of the contract price. The Contractor shall provide two (2) separate bonds, a combined Payment and Performance Bond is unacceptable.

6. The undersigned proposes to complete the work in 120 calendar days from the date of award of the contract.

7. To pay to the City as liquidated damages, and not as a penalty, on the account of delay, for each calendar day elapsing between the date herein specified as the date for full completion and the actual date of full completion of the contract work, the amount of Two Hundred Fifty Dollars (\$250.00) per day, pursuant to the terms of the Supplemental Conditions.

8. Catalogues, drawings, specifications, performance data and other descriptive information of special equipment or other items required by the specifications, are included with this bid, in _____.

9. Bidder certifies that no member of the Council of the City of Fellsmere shall benefit directly or indirectly from the contract, that this proposal is made without connection with any other person, company or party making a bid or proposal, and that this proposal is in all respects fair and in good faith, without collusion or fraud.

10. Bidder hereby certifies that it has all licenses and permits required by Federal, State, and local law, statute, regulation and/or ordinance. The Bidder's Contractor's License No. is CAC 1254340.

10. Bidder hereby acknowledges receipt of the following addenda:

No.: _____, date: _____; No.: _____, date: _____;
No.: _____, date: _____; No.: _____, date: _____;
No.: _____, date: _____.

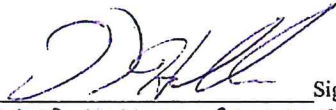
The names of all persons interested in the foregoing proposal as principals are as follows: (If the bidder or other interested person is a corporation, state the legal name of the corporation, also the names of the president, secretary, treasurer and manager thereof; if a partnership, state true name of the firm, also names of all individual partners composing the firm; if the bidder or interested person is an individual, please state their first and last name in full.)

HOLLER CONSTRUCTION, INC.

SIGNATURE OF BIDDER*

Dated 3/12/2024

Name of Bidder:
DAVID HOLLER


Signature
By: DAVID HOLLER - PRESIDENT Print Name & Title
By: _____ Print Name & Title

Address: 12625 91st ST
FELLSMERE, FL 32948

Phone: 772-589-4800

Email: info@hollercorstruction.com

* If bidder is a corporation, the legal name of the corporation shall be set forth below, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation and the corporate seal. If bidder is a partnership, the true name of the firm shall be set forth below, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership. If the bidder is an individual, the individual's signature shall be placed below.

BID BOND

Bond No. BID-0023222

KNOW ALL MEN BY THESE PRESENTS, that we Holler Construction, Inc., as Principal, and The Ohio Casualty Insurance Company, as Surety, a corporation duly organized under the Laws of the State of New Hampshire with its principal offices located at 62 Maple Avenue, Keene, NH 03431 and authorized to do business in the State of Florida, are held and firmly bound unto CITY OF FELLSMERE (hereinafter *City*) in the penal sum of Five Percent of Bid Amount, lawful money of the United States, amounting to 5 % of the total bid price, for the payment of which, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The reason for this obligation is that the Principal has submitted the accompanying bid dated _____, 2024, for the **SENIOR LEAGUE PARK CONCESSION STAND RENOVATION project**.

NOW THEREFORE, if the Principal shall not withdraw said bid within the period of time set forth in the contract documents and shall within ten (10) calendar days after the prescribed forms are presented to the Principal for signature enter into a written contract with the City in accordance with the bid as accepted, and if the Principal shall give the required bonds with good and sufficient sureties for the faithful performance and proper fulfillment of such contract and for the protection of laborers and material men, then the above obligation shall be void and of no effect; provided, however, that, in the event of the withdrawal of said bid within the periods specified or the failure to enter into said contract and give such bonds within the time specified, then the Principal shall forfeit the said bid bond amount to the City, paying to City 5 % of the total bid price.

It is further agreed that if the CITY is required to initiate legal proceedings to recover on this bond, it may also recover its costs relating thereto including a reasonable amount for attorneys' fees.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals this 12th day of March, 2024, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESSES (if individual)

[Signature]
[Signature]
[Signature]

PRINCIPAL

Holler Construction, Inc.

By: [Signature]
Title David Holler, President

ATTEST (if corporation)

Title _____

Corporate Seal _____
SURETY The Ohio Casualty Insurance Company

By [Signature]
Title Odalis Cabrera, Attorney-In-Fact

Any claims under this bond may be addressed to:

Name and address of Surety

The Ohio Casualty Insurance Company
62 Maple Avenue
Keene, NH 03431

Name and address of agent or Representative in Florida
If different from above

Security Bond Associates, Inc
10131 SW 40th Street
Miami, FL 33165

Telephone number of Surety and agent or representative in Florida

(305) 552-5414

ATTEST

[Signature]
Marina Mercedes Ramil,
Florida Resident Agent #A301633

Title

Corporate Seal



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

The Ohio Casualty Insurance Company
POWER OF ATTORNEY

Principal: Holler Construction, Inc.
Agency Name: Security Bond Associates, Inc. Bond Number: BID-0023222
Obligee: City of Fallsmead
Bid Bond Amount: (5% of Bid Amount) Five Percent of Bid Amount

KNOW ALL PERSONS BY THESE PRESENTS: that The Ohio Casualty Insurance Company, a corporation duly organized under the laws of the State of New Hampshire (herein collectively called the "Company"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint Odalis Cabrera in the city and state of Miami, FL, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Company in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of the Company has been affixed thereto this 28th day of March, 2021.



The Ohio Casualty Insurance Company

By: [Signature]
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

STATE OF PENNSYLVANIA
COUNTY OF MONTGOMERY ss

On this 28th day of March, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of The Ohio Casualty Insurance Company and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: [Signature]
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-law and Authorizations of The Ohio Casualty Insurance Company, which is now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature or electronic signatures of any assistant secretary of the Company or facsimile or mechanically reproduced or electronic seal of the Company, wherever appearing upon a certified copy of any power of attorney or bond issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of The Ohio Casualty Insurance Company do hereby certify that this power of attorney executed by said Company is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Company this 12th day of March, 2024.



By: [Signature]
Renee C. Llewellyn, Assistant Secretary

EXHIBIT "C"
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. 2024-04 for **SENIOR LEAGUE PARK CONCESSION STAND RENOVATION.**
2. This sworn statement is submitted by Holler Construction Inc
(Name of entity submitting sworn statement)
whose business address is 12625 91 St Fellsmere FL 32948
and whose mailing address, if different, is: _____.
Its Federal Employer Identification Number (FEIN) is 20-4421937.
(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)
3. My name is Dave Holler (please print name of individual signing) and my relationship to the entity named above is Owner / President.
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: 3/12/24

[Signature]
(signature)

STATE OF FLORIDA

COUNTY OF INDIAN RIVER

PERSONALLY APPEARED BEFORE ME, the undersigned authority, DAVE HOLLER who, after first being sworn by me, affixed his/her signature in the space provided above on this 12 day of MARCH, 2024.

WITNESS my hand and official seal in the State and County last aforesaid this 12 day of MARCH, 2024.

[Signature]
Notary / State of Florida at Large

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

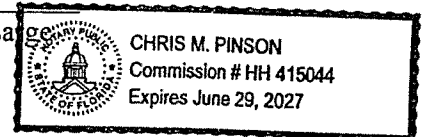


EXHIBIT "D"
INFORMATION REQUIRED OF BIDDERS
GENERAL INFORMATION

THE UNDERSIGNED BIDDER GUARANTEES THAT THE TRUTH AND ACCURACY OF ALL STATEMENTS AND ANSWERS HEREIN CONTAINED. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY BE CONSIDERED SUFFICIENT JUSTIFICATION TO DISQUALIFY A BIDDER. ADDITIONAL SHEETS SHALL BE ATTACHED AS REQUIRED.

1. Contractor's Name/Address David Holler
12625 91st St
Fellsmere, FL 32948
2. Contractor's Telephone Number: 772-589-4800
3. Contractor's Email: info @ hollerconstruction.com
4. Contractor's License: CBC 1254340
5. Number of years as a Contractor in construction work of the type involved in this contract: 18 yrs
6. What is the last project of this nature that you have completed?
Large pool house and deck at Driftwood Resort
7. Have you ever failed to complete work awarded to you; if so, where and why? NO
8. List the names and titles of all officers of Contractor's firm
David Holler - President
9. Name of person who inspected site or proposed work for your firm:
Name: David Holler
Date of Inspection: 3/1/2024

NOTE: If requested by the City of Fellsmere, the bidder shall furnish a notarized financial statement, references, and other information, sufficiently comprehensive to permit an appraisal of his current financial condition.

LIST OF SUB-CONTRACTORS

The Bidder **SHALL** list below the name and address of each Sub-Contractor who will perform work under this Contract in excess of one-half percent of the total bid price and shall also list the portion of the work which will be done by such Sub-Contractor. After the opening of Proposals, changes or substitutions will be allowed with written approval of the City of Fellsmere. Sub-Contractors must be properly licensed and hold a valid Certificate of Competency.

<u>Work to be Performed</u>	<u>Sub-Contractor's Name/Address</u>
1. <u>Electrical</u>	<u>Chris Supplee Electric, LLC</u> <u>109 Englar Dr, Sebastian, FL</u>
2. <u>Plumbing</u>	<u>Oak Plumbing, LLC</u> <u>268 Cedar St, Sebastian, FL</u>
3. <u>Roofing</u>	<u>Brian Coffey Roofing</u> <u>10045 80th St, Vero Beach, FL</u>
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____

Note: Attach additional sheets if required.

EXHIBIT "E"
SWORN STATEMENT UNDER THE FLORIDA TRENCH SAFETY ACT

THIS FORM MUST BE SIGNED BY THE BIDDER WHO WILL BE RESPONSIBLE FOR THE EXCAVATION WORK ("BIDDER"), OR ITS AUTHORIZED REPRESENTATIVE, IN THE PRESENCE OF A NOTARY PUBLIC AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with the: Bid Form for The City of Fellsmere, **SENIOR LEAGUE PARK CONCESSION STAND RENOVATION.**

2. This Sworn Statement is submitted by Holler Construction Inc,
(Legal Name of Entity Submitting Sworn Statement)
hereinafter "BIDDER". The BIDDER's address is 12625 91 ST Fellsmere
FL 32948
BIDDER's Federal Employer Identification Number (FEIN) is 20-4421937.

3. My name is Dave Holler and my relationship to the BIDDER
(Print Name of Individual Signing)
is Owner / President.
(Position or Title)

I certify, through my signature at the end of this Sworn Statement, that I am an authorized representative of the BIDDER.

4. The Trench Safety Standards that will be in effect during the construction of this Project are contained within the Trench Safety Act, Section 553.60 et. seq. Florida Statutes and refer to the applicable Florida Statute(s) and/or OSHA Regulation(s) and include the "effective date" in the citation(s). Reference to and compliance with the applicable Florida Statute(s) and OSHA Regulation(s) is the complete and sole responsibility of the BIDDER. Such reference will not be checked by OWNER or ENGINEER and they shall have no responsibility to review or check the BIDDER's compliance with the Trench Safety Standards.

5. The BIDDER assures the OWNER that it will comply with the applicable Trench Safety Standards.

6. The BIDDER has allocated and included in its Bid the total amount of \$ None, based on the linear feet of trench to be excavated over five (5) feet deep, for compliance with the applicable Trench Safety Standards, and intends to comply with said standards by instituting the following specific method(s) of compliance on this Project: N/A

7. The determination of the appropriate method(s) of compliance is the complete and sole responsibility of the BIDDER. Such methods will not be checked by the OWNER or ENGINEER for accuracy, completeness, or any other purpose. The OWNER and ENGINEER shall have no responsibility to review or check the BIDDER's compliance with the Trench Safety Standards.

The BIDDER has allocated and included in its Bid the total amount of \$ None based on the square feet of shoring to be used for compliance with shoring safety requirements and intends to comply with said shoring requirements by instituting the following specific method(s) of compliance on this Project: N/A

The determination of the appropriate method(s) of compliance is the complete and sole responsibility of the BIDDER. Such methods will not be checked by the OWNER or ENGINEER for accuracy, completeness or any other purpose. The OWNER and ENGINEER shall have no responsibility to review or check the BIDDER's compliance with the Trench Safety Standards.

8. The BIDDER, in submitting this Bid, represents that it has obtained and considered all available geotechnical information, has utilized said geotechnical information and that, based on such information and the BIDDER's own information, the BIDDER has sufficient knowledge of the Project's surface and subsurface site conditions and characteristics to assure BIDDER's compliance with the applicable Trench Safety Standards in designing the trench safety system(s) for the Project.

BIDDER: D. Heller
By: Dave Heller
Position or Title: Owner / ~~CEO~~ President
Date: 3/12/24

STATE OF
COUNTY OF

Personally appeared before me, the undersigned authority, DAVE HELLER
who after first being sworn by me, affixed his/her signature in the space provided above on this
12 day of MARCH, 2024.

Chris M. Pinson
Notary Public, State at large
My Commission Expires:

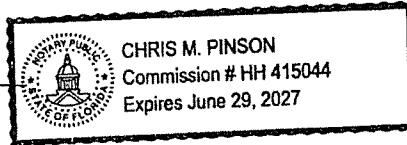



EXHIBIT "F"
Equal Employment Opportunity Requirements - 41 CFR part 60

The Bidder/Contractor hereby agrees that it will incorporate or cause to be incorporated into any subcontract for construction work, or modification thereof, the following equal opportunity clause:

Company Name: Holler Construction, INC
Authorized By:  David Holler
(Signature) (Print Name)
Title: President Date: 3/12/24

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, 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, 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, or national origin.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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 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.
- 7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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.

EXHIBIT "F"
Equal Employment Opportunity Requirements - 41 CFR part 60

§60-1.7 Reports and other required information.

(a) Requirements for prime contractors and subcontractors.

- (1) Each prime contractor and subcontractor shall file annually, on or before the September 30, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with §60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided*, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1) (i), (ii), and (iv) of this section.
- (2) Each person required by §60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with §60-1.7(a)(1), or at such other intervals as the Deputy Assistant Secretary may require. The Deputy Assistant Secretary may extend the time for filing any report.
- (3) The Deputy Assistant Secretary or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Deputy Assistant Secretary or the applicant deems necessary for the administration of the order.
- (4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the Deputy Assistant Secretary, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the regulations in this part.

(b) Requirements for bidders or prospective contractors—

- (1) *Certification of compliance with part 60-2: Affirmative Action Programs.* Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.
- (2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Deputy Assistant Secretary requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Deputy Assistant Secretary requests.

(c) Use of reports. Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

EXHIBIT "F"
Equal Employment Opportunity Requirements - 41 CFR part 60

§60-1.42 Notices to be posted.

- (a) Unless alternative notices are prescribed by the Deputy Assistant Secretary, the notices which contractors are required to post by paragraphs (1) and (3) of the equal opportunity clause in §60-1.4 will contain the following language and be provided by the contracting or administering agencies:

Equal Employment Opportunity is the Law — Discrimination is prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246

Title VII of the Civil Rights Act of 1964—*Administered by:*

The Equal Employment Opportunity Commission

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 15 or more employees, by Labor Organizations, by Employment Agencies, and by Apprenticeship or Training Programs

Any person who believes he or she has been discriminated against should contact

The Equal Employment Opportunity Commission
1801 L Street NW., Washington, DC 20507

Executive Order No. 11246—*Administered by:*

The Office of Federal Contract Compliance Programs

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.

Any person who believes he or she has been discriminated against should contact:

The Office of Federal Contract Compliance Programs
U.S. Department of Labor, Washington, DC 20210

- (b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment, and representatives of each labor union or other organization representing his employees with which he has a collective-bargaining agreement or other contract or understanding.

EXHIBIT "G"

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transaction**

The Bidder/Contractor certifies that the firm or any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:

- (a) Are not presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions as defined in 49 C.F.R. s29.110(a) by any federal department or agency;
- (b) Have not within three year period preceding this certification been convicted of or had a civil judgement rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause of default.

The Bidder/Contractor certifies that it shall not knowingly enter into transactions with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by the granting agency.

If unable to certify to any statements in this Certification, the Bidder/Contractor shall attach an explanation.

Company Name: Holler Construction, INC

Authorized By:  David Holler
(Signature) (Print Name)

Title: President

Date: 3/12/24

EXHIBIT "G"
**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transaction**

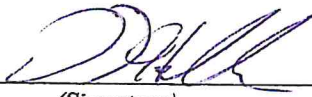
Instructions for Certification

1. By signing and submitting this certification with the proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted. If at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms 'covered transaction', 'debarred', 'suspended', 'ineligible', 'lower tier covered transaction', 'participant', 'person', 'primary covered transaction', 'principal', 'proposal', and 'voluntarily excluded', as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Appendix B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may pursue available remedies, including suspension and/or debarment.

EXHIBIT "H"
CERTIFICATION REGARDING COPELAND "ANTI-KICKBACK" ACT

Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 276c) – All contracts in excess of \$2,000 for construction or repair shall include a provision for compliance with Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Buildings or Public Work Financed in Whole or Part by Loans or Grants from the United States"). This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work.

Company Name: Holler Construction, INC

Authorized By:  David Holler
(Signature) (Print Name)

Title: President

Date: 3/12/24

EXHIBIT "I"
NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of FLORIDA
County of INDIAN RIVER
DAVE HOLLER, being first duly sworn, disposes and says that:
(Name/s)

1. They are Owner/President of Holler Construction Inc., the Bidder that
(Title) (Name of Company)
has submitted the attached bid;
2. He 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) [Signature]
(Title) Owner / President

STATE OF { FLORIDA }
COUNTY OF { INDIAN RIVER }

The foregoing instrument was acknowledged before me this 3-12-24
(Date)

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

[Signature]
Notary (print & sign name)

Commission No. _____

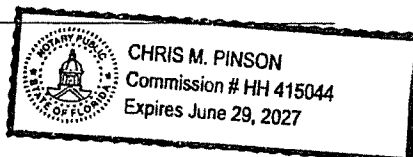


EXHIBIT J

CERTIFICATION OF E-VERIFY

Project Description: Provide materials, machinery, equipment, labor and utilities to construct Senior League Concession Stand Renovation, including but not limited to: earthwork, roofing, windows, doors, electric, plumbing, walls, flooring, management and ancillaries needed to complete the specified construction.

Contractor acknowledges and agrees to the following:

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 Contractor during the term of the Contract to perform employment duties within Florida; and
2. All persons, including Subcontractors, assigned by the Contractor to perform work pursuant to the Contract with the Local Agency.

Company/Firm: Holler Construction, INC

Authorized Signature: 

Written Name: David Holler

Title: President

Date: 3/12/24

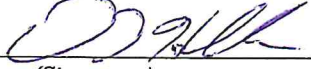
EXHIBIT "K"
**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL
EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246 AND 41 CFR PART 60-4)**

The Bidder/Contractor certifies:

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

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

Company Name: Holler Construction, INC

Authorized By:  David Holler
(Signature) (Print Name)

Title: President Date: 3/12/24

Disadvantaged Business Enterprise program goal: Not less than 10 percent of the contract amount expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

These goals are applicable to all the Contractor's construction work. The contractor shall make a good faith effort to employ minorities and women. The DBE program is not a quota or set-aside program, and it is not intended to operate as one. The 10 percent goal is an aspirational goal. It does not set any funds aside for any person or group. It does not require any recipient (State, contractor, individual project sponsor) to have specific percentage goals.

The objective of the DBE requirement is to provide disadvantaged business enterprises with opportunities to compete for government contracts. The State of Florida is required to make efforts to advise DBEs of the existence of the Recreational Trails Program and the opportunities associated with it. Each State of Florida DOT should have a directory of qualified DBEs.

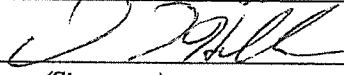
Examples of how a contractor may take affirmative steps to include DBEs include but are not limited to:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participations by small and minority businesses and women's business enterprises;
- Establishing delivery schedules, where requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- Using services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

EXHIBIT "L"
CERTIFICATION REGARDING LOBBYING

Byrd Anti-Lobbying Amendment (31 USC 1352) – Contractors shall not use 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 Federal contract, grant or any other award covered by 31 USC 1352. Contractors who apply or bid for an award less than \$100,000 are not required to file the required certification.

Company Name: Holler Construction, INC


Authorized By:  David Holler
(Signature) (Print Name)

Title: President Date: 3/12/24

EXHIBIT "M"
CERTIFICATION REGARDING CONTRACT WORK HOURS AND SAFETY STANDARDS

Contract Work Hours and Safety Standards (40 USC 327-333) – Pursuant to 40 USC 3701(b)(3)(A)(iii), this chapter does not apply to a contract in an amount that is not greater than \$100,000.

Company Name: Holler Construction, INC

Authorized By:  David Holler
(Signature) (Print Name)

Title: President

Date: 3/12/24

CONTRACT

IN CONSIDERATION OF the mutual promises, covenants and conditions contained herein this agreement is made on _____(date), by and between the City of Fellsmere, a municipal corporation of Indian River County in the State of Florida (hereinafter referred to as *City*), and Holler Construction, Inc. of 12625 91st Street, Fellsmere, Indian River County, Florida, duly licensed as a contractor in Florida, holding currently valid Contractor's License no. CBC 1254340, (hereinafter referred to as *Contractor*), effective as hereinafter set forth.

1.0 The Work. Contractor shall furnish, except as otherwise provided, at contractor's own cost and expense, all labor, services, material, and work for the construction and completion of the work to be done under this contract (hereinafter referred to as *the Work*), which is generally described as follows:

SENIOR LEAGUE PARK CONCESSION STAND RENOVATION

Provide materials, machinery, equipment, labor and utilities to construct Senior League Concession Stand Renovation, including but not limited to: earthwork, roofing, windows, doors, electric, plumbing, walls, flooring, management and ancillaries needed to complete the specified construction.

(hereinafter referred to as *Project*).

Contractor will construct and complete the Work in a thorough, skillful and substantial manner in every respect to the satisfaction and approval of Jason W. Short, P.E., Mills, Short & Associates, 700 22nd Place, Suite 2C/2D, Vero Beach, FL 32960 [hereinafter referred to as *the Designer*], within the time specified in this contract and in strict accordance with the instructions and information contained in the Notice to Bidders, Instructions to Bidders, Bid Form, this contract, any performance or other surety bond and the drawings and specifications, including all addenda incorporated in any of the above-mentioned documents before the execution of this contract. All of the above documents are made a part of this contract and form the *Contract Document* as fully as if set forth at length herein.

1.2. Contractor shall execute work shown on the drawings even though not particularly described in specifications and all work described in the specifications even though not shown on the drawings. Contractor shall furnish everything necessary for the proper and complete execution of the work even though express reference to any detail of it is omitted from either the drawings or specifications.

2.0 City Design Representative. The Project has been designed by Designer who shall act as City's representative, assume all duties and responsibilities and have the rights and authority assigned to the Designer in the Contract Documents with respect to completion of the Work in accordance with the Contract Documents.

3.0 Contract Time. The entire Work, ready for its intended use, shall be substantially complete (except for items specifically listed by Contractor as incomplete) within _____()

calendar days from the date when Contract Time commences to run. The parties recognize that time is of the essence with respect to this Agreement and the Work. Failure to timely complete the Work as provided herein shall subject the Contractor to the Liquidated Damages provision which is set forth in Article G. of the Supplemental Conditions. The construction of the Work shall commence no later than _____ days after the date for commencement in the Notice to Proceed.

4.0 Drawings And Specifications.

4.1. The Contract Documents, which comprise the entire agreement between City and Contractor concerning the Work, are set forth in the attached Exhibit "A." There are no other Contract Documents other than those set forth on Exhibit "A" Contract Documents may be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

4.2. Any copies of the drawings and specifications that are reasonably required for the execution of the work will be furnished to contractor free of charge, unless otherwise provided.

4.3. Contractor shall keep him/her/itself supplied with the latest issues of all drawings and specifications and shall keep one copy of the same at the site of the work in good order available to Designer.

4.4. The drawings and specifications, and any copies of the drawings and specifications, are and shall remain the property of City and shall not be reused on other work by contractor. These documents shall be delivered to the Designer at the completion of the work, or earlier if required.

4.5. City shall promptly furnish contractor with any additional instructions, by means of drawings or otherwise, as are required to proceed with the Work. All such drawings and instructions shall be consistent with, and reasonably inferable from, the contract. The Work shall be executed in conformity with these instructions. Contractor shall do no work without proper drawings and instructions.

5.0 Contract Price; Compensation. In addition to the extra charges expressly mentioned and provided for herein, City shall pay and Contractor shall receive the prices stipulated in the proposal attached to this contract as Exhibit "B" as full and complete compensation for everything furnished and done by Contractor under this contract, including loss or damage arising out of the Work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the Work; for all risks of every description associated with the Work; for all expenses incurred due to the suspension or discontinuance of the Work; and for well and faithfully completing the Work as provided in this Agreement.

6.0 Method Of Payment.

6.1 Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Designer as provided in the General Conditions.

6.2 Progress Payments. City shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payments as recommended by Designer, on or about the 10th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraphs 2.05 and 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements. Partial and final release of liens satisfactory to the City and the Designer demonstrating that the previously paid monies have been used to satisfy all costs incurred in the performance of the work shall be required. (Submit application to the Designer by the 25th of preceding month)

6.2.1. Prior to Final Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Designer determine, or City may withhold, in accordance with paragraph 14.02.B.5. of the General Conditions;

95% of Work completed, and
95% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to City as provided in paragraph 14.02 of the General Conditions).

6.3. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, City shall pay the remainder of the Contract Price as recommended by the Designer as provided in said paragraph 14.07.C.

6.4 The monies due hereunder shall not bear interest.

7.0. Contractor's Representations. As an inducement for City to enter into this Agreement Contractor makes the following representations.

7.1. Contractor has familiarized itself with the nature and extent of the Contract Documents, the Work, site, locality, and all other local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2. Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions, which are identified in the Supplemental Conditions as provided in paragraph 2.05 of the General Conditions.

7.3. Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional

examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.4. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.

7.5. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.6. Contractor has given the Designer written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Designer is acceptable to Contractor.

8.0 Notice. Notice shall be given as provided in Article 17 of the General Conditions. The addresses of City, Contractor, and the Designer for the purpose of giving notice are as follows:

City of Fellsmere:
Grant Administrator
City of Fellsmere
22 South Orange Street
Fellsmere FL 32948-6714
Facsimile: (772) 571-1901
Email: grantadmin@cityoffellsmere.org

Contractor:
Holler Construction, Inc.
12625 91st Street
Fellsmere, FL 32948
Email: info@hollerconstruction.com

Designer:
Jason W. Short, P.E. of Mills, Short & Associates
700 22nd Place, Suite 2C/2D
Vero Beach, FL 32960
Facsimile: (772) 907-6140
Email: JShort@MillsShortAssociates.com

9.0 Archeological Requirements. If any archeological remains are discovered during ground

disturbance or construction, work shall cease immediately and the City of Fellsmere and the Florida Division of Historic Resources shall be contracted immediately to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

10.0 Public Records.

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

10.1 Requirements. The Contractor shall comply with Florida public records law, specifically to:

10.1.1 Keep and maintain public records required by the City to perform the service.

10.1.2 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., as amended, or as otherwise provided by law.

10.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

10.1.4 Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor 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.

10.2 Requests. Requests for public records shall be processed as follows:

10.2.1 If Contractor receives a request to inspect or copy public records relating to the City's contract with the Contractor, the Contractor 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 the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

10.2.2 If the Contractor 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.

10.2.3 Should the Contractor fail to provide the public records to the City within a reasonable time the Contractor may be subject to penalties under Section 119.10 F.S.

10.3 Enforcement. Enforcement of requests for public records by civil action will be processed as follows:

10.3.1 If a civil action is filed against the Contractor to compel production of public records relating to the City's contract for services, the Court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorneys' fees, if:

- (a) The Court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
- (b) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the City and to the Contractor.

10.3.2 A notice complies with subparagraph 17.03.1(b) if is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed in this contract or to the Contractor'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.

10.3.3 A Contractor who complies with public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

11.0 Execution. City and Contractor each binds itself, and as the case may be, its partners, its permitted successors and assigns, and its legal representatives to the other party hereto and to that parties' partners, permitted successors and assigns, and legal representatives with respect to all covenants, agreements and obligations contained in the Contract Documents. If not otherwise specifically set forth, this Agreement shall be effective on the date of the last of the parties to sign.

REMAINDER OF PAGE DELIBERATELY LEFT BLANK

IN WITNESS WHEREOF, each party to this Contract has caused it to be executed in triplicate at _____ (*place of execution*) on the date(s) indicated below. This Contract will be effective on _____.

Dated: _____

Dated: _____

City of Fellsmere

Contractor: _____

By: _____
Print Name and Title

By: _____
Print Name and Title

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by _____ (name of person) as _____ (type of authority, . . . e.g. officer, trustee, attorney in fact) for _____ (name of party on behalf of whom instrument was executed).

Notary Public - State of Florida
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification _____
Type of Identification Produced: _____

EXHIBIT "A"

CONTRACTORS DOCUMENTS

Bid Package

- Invitation to Bid
- Instructions to Bidders
- Bid Form
- Bid Bond
- Statement on Public Entity Crimes
- Information required of Bidders
- Trench Safety Act
- Equal Employment Opportunity Requirements
- Debar Certification
- Copeland AntiKickback
- Non-Collusion
- E-Verify
- Disadvantaged Business Enterprise
- Lobbying
- Work Hours and Safety

Contract Forms

- Notice of Award
- Contract
- Payment Bond
- Performance Bond
- Notice to Proceed
- Request for Payment Form
- Substantial Completion
- Final Certification
- Final Payment
- Change Order

Specifications

- General Conditions
- Supplemental Conditions

Plans

- Released for Construction dated August 8, 2023

EXHIBIT "B"