



AGENDA

**REGULAR MEETING OF THE STUART CITY COMMISSION
SEPTEMBER 12, 2022
AT 4:00 PM
COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994**

CITY COMMISSION

**Mayor Troy McDonald
Commissioner Becky Bruner
Commissioner Eula R. Clarke
Commissioner Christopher Collins
Commissioner Campbell Rich**

ADMINISTRATIVE

**City Manager, David Dyess
City Attorney, Michael J. Mortell
City Clerk, Mary R. Kindel**

Agenda items are available on our website at <http://www.cityofstuart.us>
Phone: (772) 288-5306. Fax: (772) 288-5305. E-mail: mkindel@ci.stuart.fl.us

In compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation to attend this meeting should contact the City's ADA coordinator at 772-288-5306 at least 48 hours in advance of the meeting, excluding Saturday and Sunday.

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

(RC) next to an item denotes there is a City Code requirement for a Roll Call vote.
(QJ) next to an item denotes that it is a quasi-judicial matter or public hearing.

WHAT IS CIVILITY? Civility is caring about one's identity, needs and beliefs without degrading someone else's in the process. Civility is more than merely being polite. Civility requires staying "present" even with those persons with whom we have deep-rooted and perhaps strong disagreements. It is about constantly being open to hear, learn, teach and change. It seeks common ground as a beginning point for dialogue. It is patience, grace, and strength of character. Civility is practiced in our City Hall.

PUBLIC COMMENT: If a member of the public wishes to comment upon ANY subject matter, including quasi-judicial matters, please submit a Request to Speak form. These forms are available in the back of the Commission Chambers, and should be given to the City Clerk prior to introduction of the item number you would like to address.

CONSENT CALENDAR: Those matters included under the Consent Calendar are self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by one motion. If discussion on an item is desired by any City Commissioner that item may be removed by a City Commissioner from the Consent Calendar and considered separately. If an item is quasi-judicial it may be removed by a Commissioner or any member of the public from the Consent Calendar and considered separately.

QUASI-JUDICIAL HEARINGS: Some of the matters on the Agenda may be "quasi-judicial" in nature. City Commissioners will disclose all ex-parte communications, and may be subject to voir dire by any interested party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment without being sworn. Unsworn testimony will be given appropriate weight and credibility by the City Commission.

ROLL CALL

PLEDGE OF ALLEGIANCE

1. OATH OF OFFICE - GROUP I, CAMPBELL RICH, GROUP II, CHRISTOPHER COLLINS AND GROUP V, EULA R. CLARKE.

PROCLAMATIONS

2. HUNGER ACTION MONTH - SEPTEMBER 2022
3. CONSTITUTION WEEK - SEPTEMBER 17-23, 2022
4. SUICIDE PREVENTION AWARENESS MONTH - SEPTEMBER 2022
5. SUICIDE PREVENTION AWARENESS MONTH (2-1-1 HELPLINE) - SEPTEMBER 2022
6. DECLARING MARTIN BEAUTIFUL INTERNATIONAL COASTAL CLEANUP DAY IN STUART, FLORIDA

PRESENTATIONS

7. VOLUNTEERS IN MEDICINE BY KIMBERLY OUELLETTE, MSW AND LISA BAXTER.
8. CITY GRANTS OVERVIEW - FUNDS APPLIED FOR AND RECEIVED
9. UPDATE ON SW OSCEOLA STREET PHASE 2 UNDERGROUNDING
10. BRIEF HISTORY OF THE KANNER LLC APPROVAL PROCESS.

COMMENTS BY CITY COMMISSIONERS

COMMENTS BY CITY MANAGER

APPROVAL OF AGENDA

COMMENTS FROM THE PUBLIC (3 Minutes Max.)

CONSENT CALENDAR

11. APPROVAL OF 08/22/2022 CCM MINUTES (RC)
12. SR-5/US-1 SE CONTRACTORS WAY TO N. JENSEN BEACH BLVD - FDOT AGREEMENT (RC):

RESOLUTION No. 72-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT (AT UTILITY EXPENSE) FOR THE ADJUSTMENT OF CITY OF STUART'S UTILITY FACILITIES FOR THE SR-5/US-1 FROM SE CONTRACTORS WAY TO N. JENSEN BEACH BLVD. PROJECT; DESIGNATING AUTHORIZED REPRESENTATIVE; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

13. OFFICIAL RESULTS OF THE 2022 PRIMARY ELECTION (RC):

RESOLUTION No. 75-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA CONFIRMING THE RESULTS OF THE 2022 REGULAR PRIMARY MUNICIPAL ELECTION FOR THE CITY COMMISSION GROUP I, GROUP III, AND GROUP V; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

END OF CONSENT CALENDAR

COMMISSION ACTION

14. THIS ITEM SET FOR TIME CERTAIN OF 5:15 PM - TENTATIVE MILLAGE FOR FY 2023 (RC):

RESOLUTION No. 79-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA ADOPTING THE TENTATIVE MILLAGE RATE FOR FISCAL YEAR 2023; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

15. THIS ITEM SET FOR TIME CERTAIN OF 5:15 PM - FIRE ASSESSMENT FOR FY 2023 (RC):

RESOLUTION No. 80-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, APPROVING THE FISCAL YEAR 2022-23 NON-AD VALOREM ASSESSMENT ROLL FOR FIRE PROTECTION SERVICES, FACILITIES AND PROGRAMS; DIRECTING CERTIFICATION OF THE ASSESSMENT ROLL TO THE MARTIN COUNTY TAX COLLECTOR; AND PROVIDING AN EFFECTIVE DATE.

16. THIS ITEM SET FOR TIME CERTAIN OF 5:15 PM - TENTATIVE BUDGET FOR FY 2023 (RC):

RESOLUTION No. 81-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA ADOPTING THE TENTATIVE BUDGETS OF THE CITY OF STUART, FLORIDA, FOR FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

17. SOUTH FLORIDA PAIN MANAGEMENT, LLC CONDITIONAL USE (RC):

RESOLUTION No. 74-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING CONDITIONAL USE APPROVAL TO SOUTH FLORIDA PAIN MANAGEMENT, LLC (TENANT) FOR THE PROPERTY LOCATED AT 715 SE 5TH STREET, CONSISTING OF APPROXIMATELY 0.28 ACRES; TO ALLOW THE USE OF A PAIN MANAGEMENT CLINIC; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.

18. DOGSWORLD URBAN CODE CONDITIONAL USE (QUASI-JUDICIAL)(RC):

RESOLUTION No. 73-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING A MAJOR URBAN CODE CONDITIONAL USE APPROVAL TO JUSTIN PHILLIPS, (CONTRACT PURCHASER) FOR THE PROPERTY LOCATED AT 400 SW 7TH STREET, CONSISTING OF APPROXIMATELY 1.62 ACRES; TO ALLOW THE USE OF KENNELS FOR DOGSWORLD; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR A TIMETABLE OF DEVELOPMENT; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.

ORDINANCE SECOND READING

19. REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES (RC):

ORDINANCE No. 2488-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE FIRST READING

DISCUSSION AND DELIBERATION

ADJOURNMENT

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Mary Kindel

Title of Item:

OATH OF OFFICE - GROUP I, CAMPBELL RICH, GROUP II, CHRISTOPHER COLLINS AND GROUP V, EULA R. CLARKE.

Summary Explanation/Background Information on Agenda Request:

Commissioners Campbell Rich, Christopher Collins, and Eula Clarke shall take the Oath of Office per the City Charter prior to serving their 4-year term. The term is from 2022 to 2026.

Before taking office, each Commissioner shall also execute the Commissioner's Code of Conduct.

City of Stuart Code of Ordinances, Sec. 2-22(a) states a code of conduct for city commissioners has been established by resolution. The code of conduct is to be signed and acknowledged by each commissioner upon taking office and establishes guidelines for conduct that support the commission/manager form of government and proper etiquette for conduct.

In addition, Stuart Code of Ordinances, Sec. 7.11 - Oath of Commissioners states as follows:

After election or appointment and before taking office, each commissioner of the city shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, honor, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State and under the Charter of the City of Stuart; and that I will well and faithfully perform the duties of City Commissioner on which I am now about to enter, so help me God."

Funding Source:

N/A

Recommended Action:

Administer Oath of Office as City Commissioners.

ATTACHMENTS:

1. OATH_Collins
2. OATH_Rich
3. OATH_Clarke



OATH OF CITY OF STUART COMMISSIONER

STATE OF FLORIDA)
CITY OF STUART)
COUNTY OF MARTIN)

I DO SOLEMNLY SWEAR THAT I WILL SUPPORT, HONOR, PROTECT, AND DEFEND THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES AND OF THE STATE OF FLORIDA; THAT I AM DULY QUALIFIED TO HOLD OFFICE UNDER THE CONSTITUTION OF THE STATE OF FLORIDA AND UNDER THE CHARTER OF THE CITY OF STUART; AND THAT I WILL WELL AND FAITHFULLY PERFORM THE DUTIES OF CITY COMMISSIONER ON WHICH I AM NOW ABOUT TO ENTER, SO HELP ME GOD.

Charter Sec. 7.11 Oath of Commissioners

Christopher Collins

Sworn to and subscribed before me
this 12th day of September, 2022.

Mary R. Kindel
Notary Public



OATH OF CITY OF STUART COMMISSIONER

STATE OF FLORIDA)
CITY OF STUART)
COUNTY OF MARTIN)

I DO SOLEMNLY SWEAR THAT I WILL SUPPORT, HONOR, PROTECT, AND DEFEND THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES AND OF THE STATE OF FLORIDA; THAT I AM DULY QUALIFIED TO HOLD OFFICE UNDER THE CONSTITUTION OF THE STATE OF FLORIDA AND UNDER THE CHARTER OF THE CITY OF STUART; AND THAT I WILL WELL AND FAITHFULLY PERFORM THE DUTIES OF CITY COMMISSIONER ON WHICH I AM NOW ABOUT TO ENTER, SO HELP ME GOD.

Charter Sec. 7.11 Oath of Commissioners

Campbell Rich

Sworn to and subscribed before me
this 12th day of September, 2022.

Mary R. Kindel
Notary Public



OATH OF CITY OF STUART COMMISSIONER

STATE OF FLORIDA)
CITY OF STUART)
COUNTY OF MARTIN)

I DO SOLEMNLY SWEAR THAT I WILL SUPPORT, HONOR, PROTECT, AND DEFEND THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES AND OF THE STATE OF FLORIDA; THAT I AM DULY QUALIFIED TO HOLD OFFICE UNDER THE CONSTITUTION OF THE STATE OF FLORIDA AND UNDER THE CHARTER OF THE CITY OF STUART; AND THAT I WILL WELL AND FAITHFULLY PERFORM THE DUTIES OF CITY COMMISSIONER ON WHICH I AM NOW ABOUT TO ENTER, SO HELP ME GOD.

Charter Sec. 7.11 Oath of Commissioners

Eula R. Clarke

Sworn to and subscribed before me
this 12th day of September, 2022.

Mary R. Kindel
Notary Public

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Ryanne Cavo

Title of Item:

HUNGER ACTION MONTH - SEPTEMBER 2022

Summary Explanation/Background Information on Agenda Request:

The City of Stuart is committed to working with the Treasure Coast Food Bank in mobilizing people about the role and importance of food banks and other hunger relief organizations in addressing hunger and bringing attention to the need to devote more resources and attention to hunger issues.

Funding Source:

N/A

Recommended Action:

Issue the Proclamation.

ATTACHMENTS:

1. Hunger Action Month September 2022

PROCLAMATION HUNGER ACTION MONTH SEPTEMBER 2022

WHEREAS, hunger and poverty remain issues of grave concern in the United States, the State of Florida, the Treasure Coast, and the City of Stuart, with 52,460 children and adults in Martin County now categorized as food insecure; and

WHEREAS, the City of Stuart is committed to taking steps to raise awareness about the need to combat hunger in every part of our City and to provide additional resources that citizens of Stuart need; and

WHEREAS, the City of Stuart is committed to working with the Treasure Coast Food Bank in mobilizing people about the role and importance of food banks and other hunger relief organizations in addressing hunger and bringing attention to the need to devote more resources and attention to hunger issues; and

WHEREAS, food banks and hunger relief organizations across the country, including the Treasure Coast Food Bank, coordinated Hunger Action Day® on September 23, 2022 and will continue to host numerous events throughout the month of September to shed light on this important issue and encourage involvement in efforts to end hunger in their local community.

NOW, THEREFORE, I, _____, Mayor of the City of Stuart, Florida do hereby proclaim the Month of September, 2022, as

HUNGER ACTION MONTH

IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Stuart, Florida to be affixed this 12th day of September, 2022.

MAYOR

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: RYANNE CAVO

Title of Item:

CONSTITUTION WEEK - SEPTEMBER 17-23, 2022

Summary Explanation/Background Information on Agenda Request:

Public Law 915 assures the issuing of a proclamation each year by the President of the United States of America designating September 17th through the 23rd as Constitution Week.

Funding Source:

N/A

Recommended Action:

Issue the Proclamation.

ATTACHMENTS:

1. Constitution Week 2022

**PROCLAMATION
CONSTITUTION WEEK
SEPTEMBER 17 – 23, 2022**

WHEREAS, September 17, 2022 marks the two hundred thirty-fifth anniversary of the signing of the Constitution of the United States of America by thirty-nine (39) brave patriots; and

WHEREAS, it is fitting and proper to accord official recognition to this enduring document and this memorable anniversary, and to the patriotic celebrations and educational events which will commemorate the occasion; and

WHEREAS, Public Law 915 assures the issuing of a proclamation each year by the President of the United States of America designating September 17th through the 23rd as Constitution Week.

NOW, THEREFORE, I, _____, Mayor of the City of Stuart, Florida do hereby proclaim the week of September 17 - 23, 2022, as

CONSTITUTION WEEK

in the City of Stuart, Florida and ask all citizens to observe this memorable event with patriotic celebrations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Stuart, Florida to be affixed this 12th day of September, 2022.

ATTEST:

MAYOR

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: RYANNE CAVO

Title of Item:

SUICIDE PREVENTION AWARENESS MONTH - SEPTEMBER 2022

Summary Explanation/Background Information on Agenda Request:

September is Suicide Prevention Awareness Month, which directs the community's attention to this public health epidemic destroying lives, whole families, and sometimes entire communities.

Funding Source:

N/A

Recommended Action:

Issue the Proclamation

ATTACHMENTS:

1. Suicide Awareness Month - September 2022

**PROCLAMATION
SUICIDE PREVENTION AWARENESS MONTH
SEPTEMBER 2022**

WHEREAS, September is Suicide Prevention Awareness Month, which directs the community's attention to this public health epidemic destroying lives, whole families, and sometimes entire communities; and

WHEREAS, suicide rates on the Treasure Coast and in Okeechobee have increased significantly in the first half of 2022 according to our Medical Examiner's Office with eleven (11) suicide deaths in Martin County in quarter one of 2022; and

WHEREAS, suicide is a leading cause of death in the United States with an average 130 suicides each day. In 2020, there were an estimated 1.20 million suicide attempts; and

WHEREAS, in 2020, the age-adjusted rate per 100,000 population of Suicide Deaths (All) in Martin County was 13.9 compared to Florida at 13.1. In St. Lucie County there were 39 suicide deaths in 2021, a 23.90% year over year increase from 2020; and

WHEREAS, suicide is the only type of death that is 100% preventable; and by offering public education, data, support, and services we as a community have taken a step toward preventing another suicide by our residents – those resilient people with the capacity to recover, rebound, and heal.

NOW, THEREFORE, I, _____, Mayor of the City of Stuart, Florida do hereby proclaim September 2022, as:

SUICIDE PREVENTION AWARENESS MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Stuart, Florida to be affixed this 12th day of September, 2021.

ATTEST:

TROY MCDONALD

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Ryanne Cavo

Title of Item:

SUICIDE PREVENTION AWARENESS MONTH (2-1-1 HELPLINE) - SEPTEMBER 2022

Summary Explanation/Background Information on Agenda Request:

2-1-1 HelpLine is also the regional responder for the National Suicide Prevention Lifeline (1-800-273-TALK). 2-1-1 staff work 24 hours a day to prevent suicide loss of life with a daily average of 126 mental health/crisis calls & contacts with 10 callers with concerns of suicide daily.

Funding Source:

N/A

Recommended Action:

Issue the Proclamation.

ATTACHMENTS:

1. Suicide Awareness and Prevention Month (211) - September 2022

**PROCLAMATION
SUICIDE AWARENESS AND PREVENTION MONTH
SEPTEMBER 2022**

WHEREAS, it is nationally recognized that suicide fatalities have been on the increase and our local medical examiner has stated a 33% increase for this region; and

WHEREAS, the CDC reported their survey findings that people had considerably elevated adverse mental health conditions associated with the pandemic and lockdown, with additional impacts on younger adults, racial/ethnic minorities, essential workers, and unpaid adult caregivers; and

WHEREAS, the ensuing health, economic, and housing crisis has more recently taken its toll on mental health with increases in suicidal ideation and deaths, substance use, household violence, food insecurity and more; and

WHEREAS, there is a call for a public health response to increase suicide intervention and prevention efforts with increased community-level efforts and strategies; and

WHEREAS, 2-1-1 is that central access point providing individuals and families with guidance and crisis support via telephone or text any time of day or night, and continues as the regional responder for the newly branded national 988 Suicide & Crisis Lifeline number; and

WHEREAS, 211's highly trained and caring staff work 24 hours a day saving lives- deescalating and stabilizing people in mental health or suicide crisis, and also guiding people struggling with substance use disorder to connect with the help they need.

NOW, THEREFORE, I, _____, Mayor of the City of Stuart, Florida hereby extend recognition to 211 Palm Beach and Treasure Coast for being on the front-line of Suicide Prevention in Stuart, Florida, and in so doing, urge all citizens to be aware of the only telephone number they need to know to access information on over 1600 agency providers with wide-ranging programs and services throughout our area that include food assistance, mental health care, health clinics, growth & development screenings, special needs resources, elder in crisis assistance, daily calls to check on seniors, caregiver support & veterans services.

IN WITNESS WHEREOF, I hereunto set my hand and cause the official seal of Stuart Florida, to be affixed this 12th day of September, 2022.

MAYOR

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Ryanne Cavo

Title of Item:

DECLARING MARTIN BEAUTIFUL INTERNATIONAL COASTAL CLEANUP DAY IN STUART, FLORIDA

Summary Explanation/Background Information on Agenda Request:

The 27th annual Keep Martin Beautiful International Coastal Cleanup will be held on Saturday, September 17, 2022.

Funding Source:

N/A

Recommended Action:

Issue the Proclamation.

ATTACHMENTS:

1. Keep Martin Beautiful International Coastal Cleanup 2022

**PROCLAMATION
DECLARING MARTIN BEAUTIFUL INTERNATIONAL COASTAL CLEANUP DAY IN
STUART, FLORIDA**

WHEREAS, the Keep Martin Beautiful International Coastal Cleanup Day has been held in Martin County for the past twenty-six years in partnership with the Ocean Conservancy; and

WHEREAS, the 27th annual Keep Martin Beautiful International Coastal Cleanup will be held on Saturday, September 17, 2022; and

WHEREAS, beaches and waterways are a beautiful part of the American landscape, but trash in the ocean and along our shorelines is one of the most serious and preventable pollution problems; and

WHEREAS, more than a million people from over 100 countries around the world will unite in the largest volunteer effort in history to help improve ocean health by collecting and removing millions of pounds of trash and marine debris; and

WHEREAS, it is important that all citizens feel empowered to do something tangible that can help to improve the health and beauty of our Martin County beaches, shorelines, waterways, and other natural habitats.

NOW, THEREFORE, I, _____, Mayor for the City of Stuart, proclaim that September 17, 2022 is Coastal Cleanup Day in Stuart, Florida and calls upon residents to join in efforts to restore the area's coastal zones to more pristine conditions. Further, the staff and volunteers of Keep Martin Beautiful are commended for coordination of this important environmental stewardship effort for the benefit of our community.

IN WITNESS WHEREOF, I have hereto set my hand and caused the seal of the City of Stuart Florida to be affixed this 12th day of September, 2022.

MAYOR

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Susej Meleqi

Title of Item:

VOLUNTEERS IN MEDICINE BY KIMBERLY OUELLETTE, MSW AND LISA BAXTER.

Summary Explanation/Background Information on Agenda Request:

VOLUNTEERS IN MEDICINE BY KIMBERLY OUELLETTE, MSW AND LISA BAXTER.

Funding Source:

N/A

Recommended Action:

Enjoy!

ATTACHMENTS:

1. VIM Presentation Presentation June 2022



VOLUNTEERS IN MEDICINE CLINIC

Providing free medical care to those in need



This is Volunteers in Medicine Clinic

- About Us
- Our Patients
- Impact



About Us



Our Purpose

Provide free, high quality medical care to uninsured, eligible adults who are struggling financially and live in Martin County, Florida.

We Are

A team of volunteer and staff professionals working together to provide compassionate treatment and exceptional health care for our patients.

What makes us special

- We prioritize patient care over productivity.
- We assess and treat the whole patient, not just the issue with which they initially presented.
- We utilize volunteer professionals with vast experience and caring dispositions.
- We make everyone feel respected, valued, and worthy of care.
- We communicate with each other and our patients in a warm and gracious manner.
- We strive to be helpful and find solutions.



We Believe

Healthy people are vital
for strong and thriving
families and communities.

Services

- Primary Care
- Diagnostic & Lab Services (in partnership with Cleveland Clinic Martin Health & Diagnostic Imaging Services)
- Specialty Care provided by volunteers onsite and at their offices including cardiology, dermatology, endocrinology, internal medicine, gastroenterology, gynecology, nephrology, oncology, ophthalmology, optometry, orthopedic, otolaryngology, podiatry, and urology.
- Surgeries (CCMH & other surgery centers)
- Psychotherapy and mental health counseling
- Social services with a case manager
- Medication assistance (free or reduced cost)

History

VIM Clinic was founded in 1995 by local hospital CCMH (then Martin Memorial) and a group of local physicians who were dedicated to practicing the art of medicine instead of the business of healthcare. VIM Clinic follows a model first started in Hilton Head, South Carolina. There are 89 clinics that follow the same model across the country. Our Clinic in Stuart has been recognized nationally and is considered one of the best free and charitable clinics in the country.



VOLUNTEERS IN MEDICINE
CLINIC

Our Patients



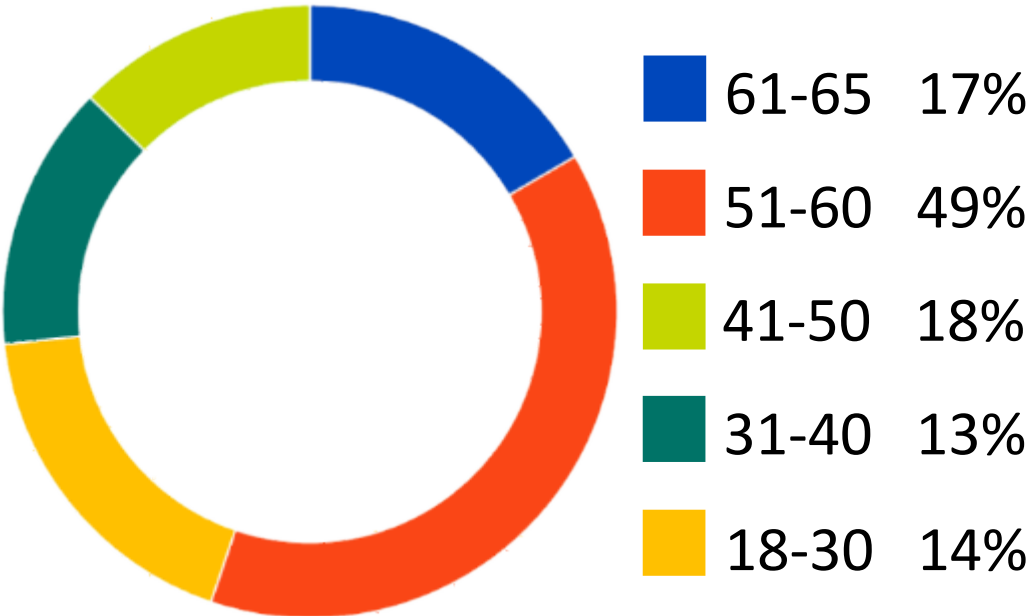
Our Patients



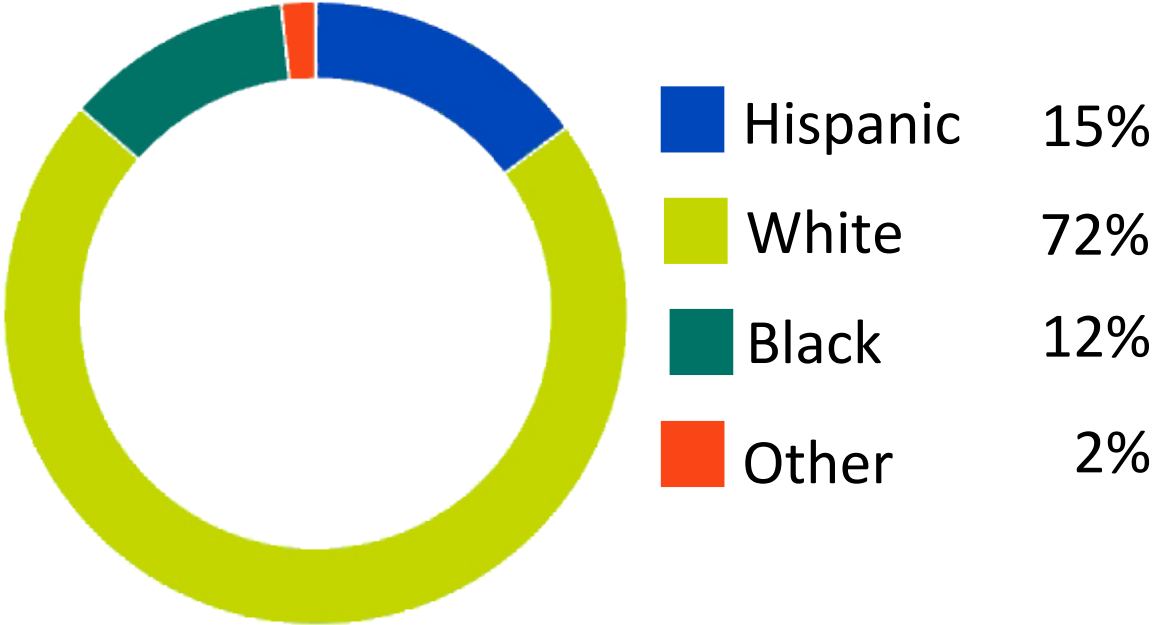
- **Base of 900 – 1000 patients per year (currently no waiting list)**
- **Must be an adult (18 -64), full-time Martin County resident, and be uninsured**
- **Patients must have income less than or equal to 200% poverty level (in 2022 that is \$27,180/year for one person or \$55,500/year for a family of 4)**

Patient Demographics

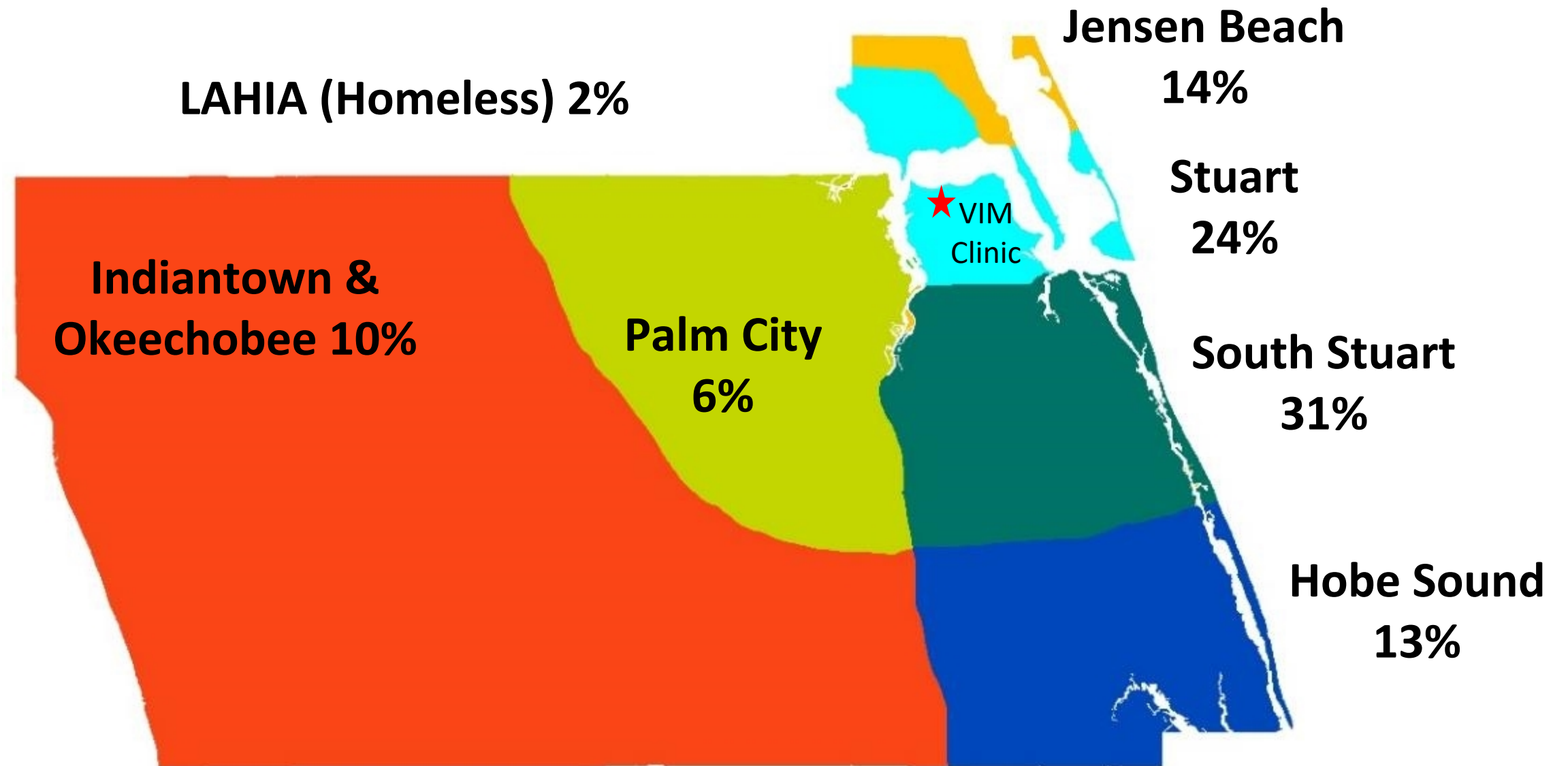
Patient Age Ranges



Patient Ethnicity



Patient Demographics





VOLUNTEERS IN MEDICINE
CLINIC

Our Impact



Patient Impact



- **More likely to get health screenings**
- **More likely to maintain compliance for medications**
- **Patients who recover their health can find better employment**



Health Care System Impact



- **Reduce Emergency Department visits for non-urgent issues**
- **Treating chronic issues like diabetes and high blood pressure reduces likelihood of hospital stays**
- **Reduce re-hospitalizations after release**

Community Impact



- **More productive workforce**
- **Higher education rates**
- **Lower crime rates**
- **Partnerships with local colleges, universities and medical schools**

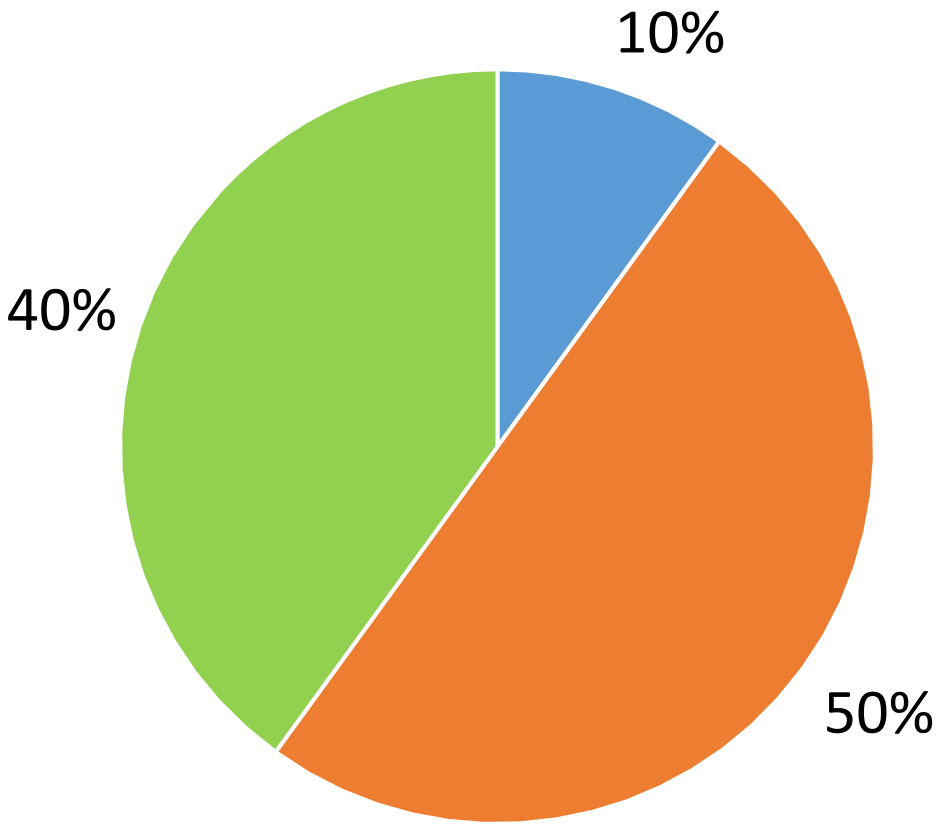


Funding & Support



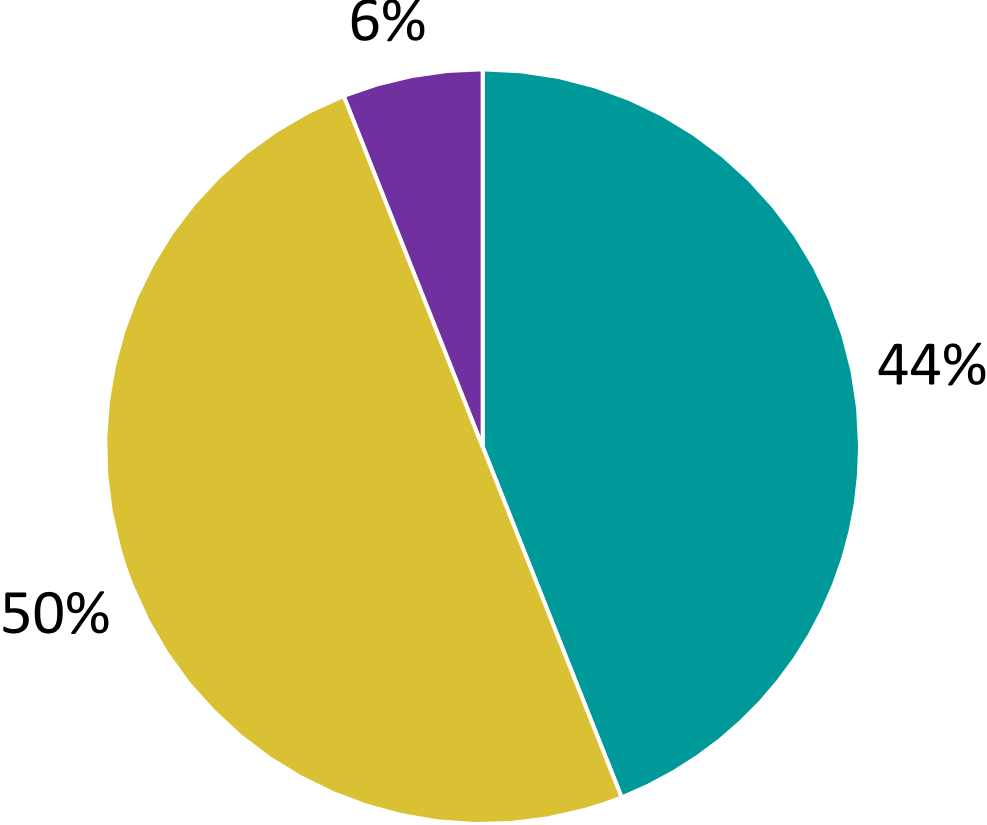
Funding & Support

Cash Donation Sources



■ Individual Donations ■ Grants ■ Special Events

Types of In-Kind Donations



■ Medications ■ Hospital & Diagnostics ■ Volunteer Services

Funding & Support



9:1 ROI

In 2021 an investment of \$1 provided \$9 worth of patient care with VIM Clinic and its partners.

\$9.725 M

In 2021, VIM Clinic was responsible for soliciting and coordinating over \$9 million in donated medical services and medications with a cash budget of \$1 million.



4,606 hrs

Despite the pandemic, volunteers donated over 4,000 hours in 2021. In 2022, volunteers are on track to increase their hours to pre-pandemic levels and contribute 8,000 volunteer hours.

How to Help VIM Clinic

- **Spread the word – tell a friend or invite us to speak**
- **Join us at an event – gala, golf kick-off party, VIM Fit Fest**
- **Tour the Clinic – free coffee!**
- **Volunteer – medical professionals and lay people welcome**
- **Make a donation – we are grateful for any contribution**

Thank you!

417 SE Balboa Ave
Stuart, FL 34994
772-463-4128

vimclinic.net



**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Michelle Vicat

Title of Item:

CITY GRANTS OVERVIEW - FUNDS APPLIED FOR AND RECEIVED

Summary Explanation/Background Information on Agenda Request:

Status of grants applied for and received

Funding Source:

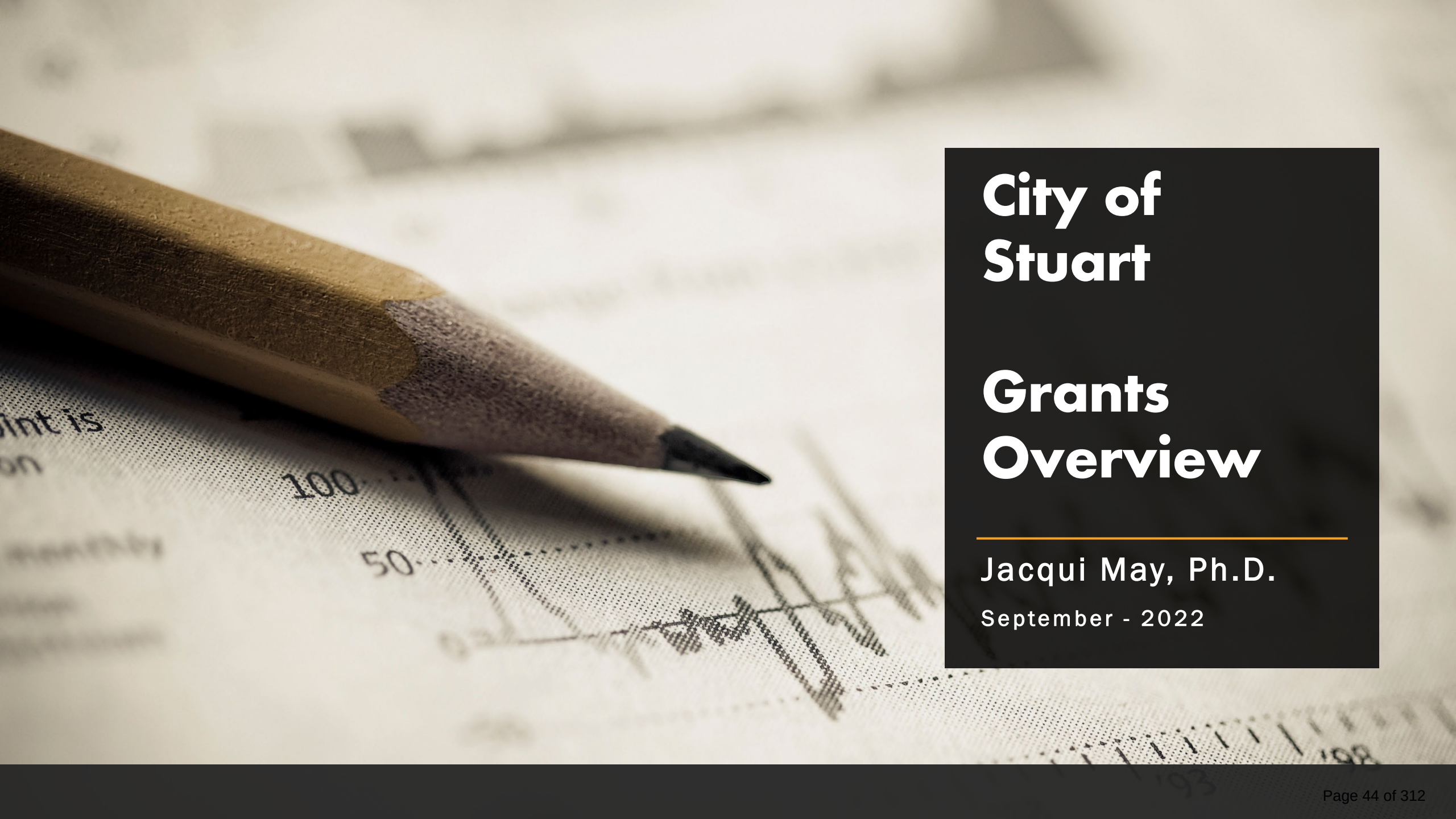
N/A

Recommended Action:

N/A

ATTACHMENTS:

1. Grant Overview Presentation Submitted 9.6.2022



**City of
Stuart**

Grants Overview

Jacqui May, Ph.D.

September - 2022





What are grants?

Resources given by an organization for a particular purpose.

Cash

Goods

Services

Grant sources:

Local agencies and organizations

Regional entities

State agencies

Federal agencies

What grants can do:

- Public safety enhancements
- Parks & Recreation
- Water quality
- Wastewater
- Stormwater
- Community-building / Social services
- Sidewalks
- Transportation
- Maintenance
- Strategic planning & studies
- Hazard mitigation
- Sustainability initiatives
- Strategic Plan Goals
- Tourism development
- And more!

Grants Awarded 2017- 2021

Year	2017	2018	2019	2020	2021	Total Awarded
Local/ Regional	\$569,711	\$398,388	\$444,376	\$363,797	\$637,847	\$2,414,119
State	\$107,216	\$664,025	\$114,808	\$101,609	\$206,400	\$1,194,058
Federal	\$625,446	\$356,731	\$483,262	\$77,118	\$0	\$1,542,557
Total Awarded	\$1,302,373	\$1,419,144	\$1,042,446	\$542,524	\$844,247	\$5,150,734

2022 Grants Pending:

Grants applied for/pending decision = \$1,448,238

Grants awarded/pending final agreement = \$5,326,037



Navigating the Future

Types of future projects grants can assist with:

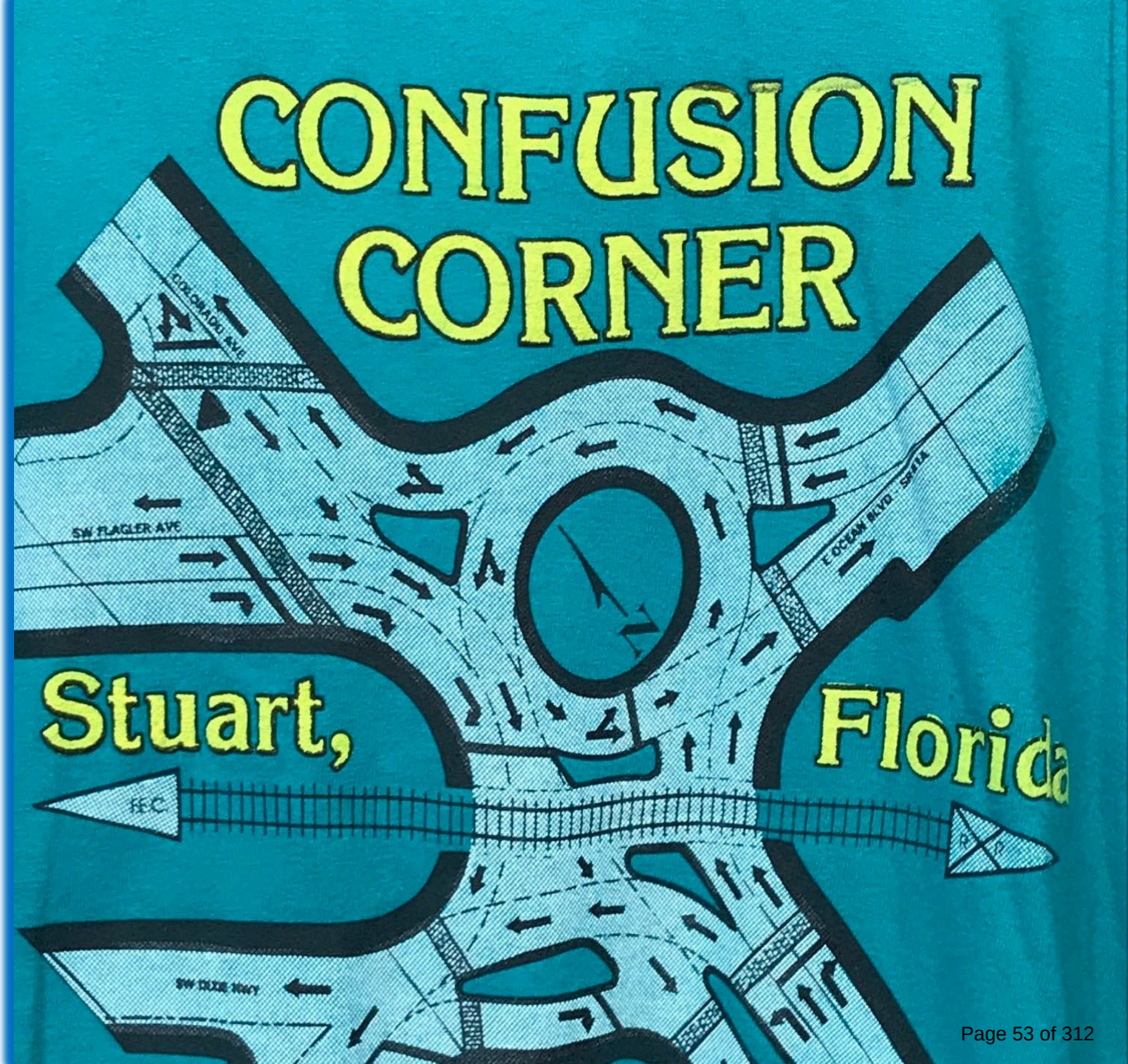
- Vulnerability Mitigation
- Stormwater / Flooding
- Public Safety Enhancements
- Community Energy Savings
- Greenhouse Gas Study
- Sustainability Awareness
- Complete Streets Initiatives

Turning the Corner!

In the works:

City of Stuart staff and
commissioners

“Grants 101 Training”
to be scheduled soon!



Jacqui May, Ph.D.
Grants Administrator
jmay@ci.stuart.fl.us



**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Pinal Gandhi-Savdas

Title of Item:

UPDATE ON SW OSCEOLA STREET PHASE 2 UNDERGROUNDING

Summary Explanation/Background Information on Agenda Request:

The Downtown Undergrounding Overhead Utilities Project includes the conversion of overhead utilities on SW Seminole Street from SW St Lucie Avenue to S Colorado Avenue, and SW Osceola Street from St Lucie Avenue to S Colorado Avenue; SW St Lucie Street from SW Seminole Street to SW Flagler Avenue; and S Colorado Avenue from SW Seminole Street to SW Flagler Avenue (map attached). The improvements will increase reliability, specifically following storm events, as well as add aesthetic benefits to the downtown. The project was initially anticipated to be completed in two phases. The undergrounding project on Seminole Street (Phase 1) was originally envisioned to be constructed with the Seminole Streetscaping project, in the summer of 2022. However, with FPL's plan to harden power lines on SW Osceola Street earlier than expected, the City and CRA agreed to expedite the undergrounding design for SW Osceola Street. In November 2021, the CRA contracted with Kimley-Horn and Associates, Inc. to develop a design for undergrounding improvements in the area of SW Osceola Street. To better coordinate the improvements, the undergrounding conversion (Phases 1 and 2) will be constructed in conjunction with the streetscape project, all in the spring/summer of 2023. This will help alleviate conflicts between undergrounding and drainage improvements while providing cost and schedule efficiency.

Currently, there is a \$3.1 M approved for the Downtown Undergrounding Overhead Utilities Project in the CRA FY 2023 budget. Details about the design, proposed equipment locations, street lighting, and project schedule will be presented at the meeting.

Funding Source:

FY 2023 CRA Budget

Recommended Action:

No action required.

ATTACHMENTS:

1. Presentation
2. Downtown Undergrounding Utilities Map



SW Osceola Street Phase 2 Undergrounding

Kimley»Horn

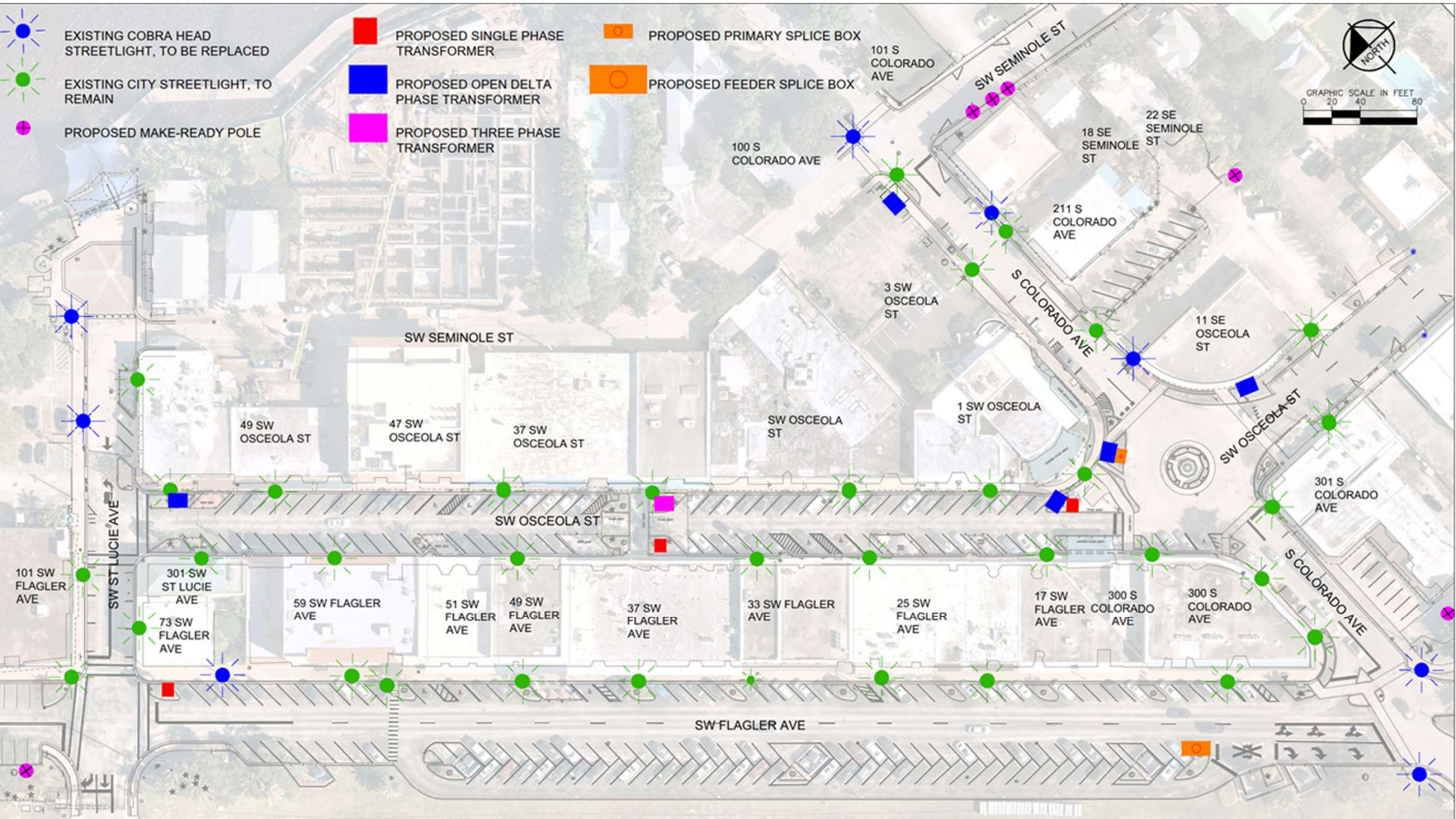


Tonight's Agenda

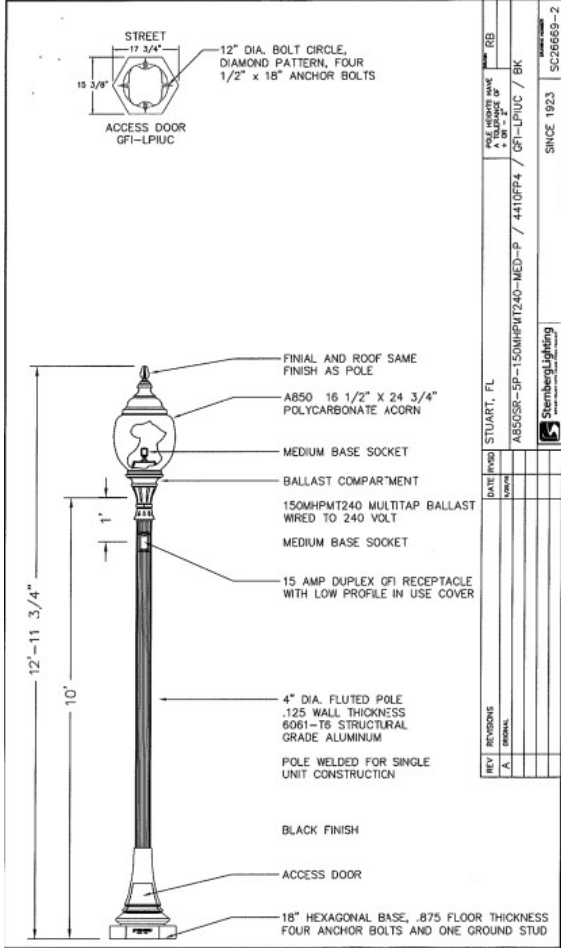
- Typical Equipment
- Proposed Significant Equipment Locations
- Street Lighting
- What to Expect During Construction
- Current Schedule

Typical Undergrounding Equipment

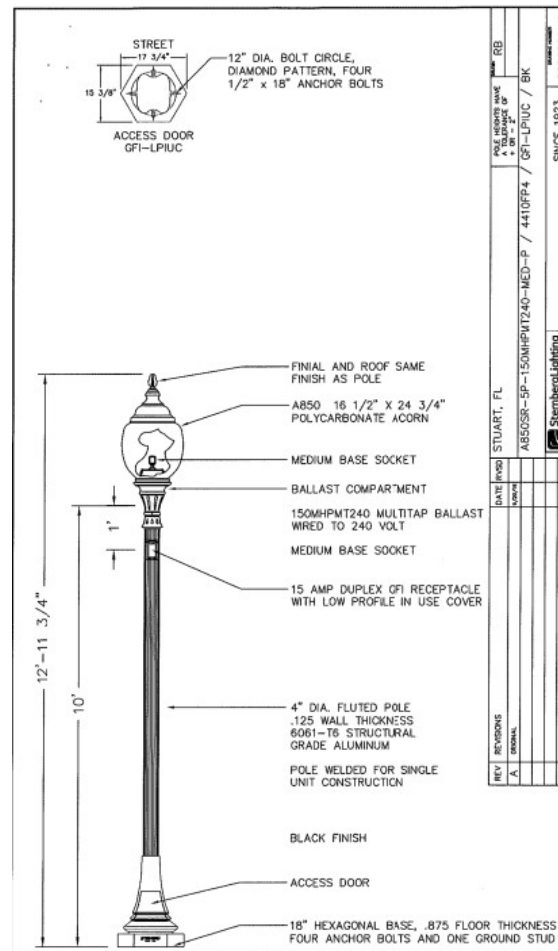




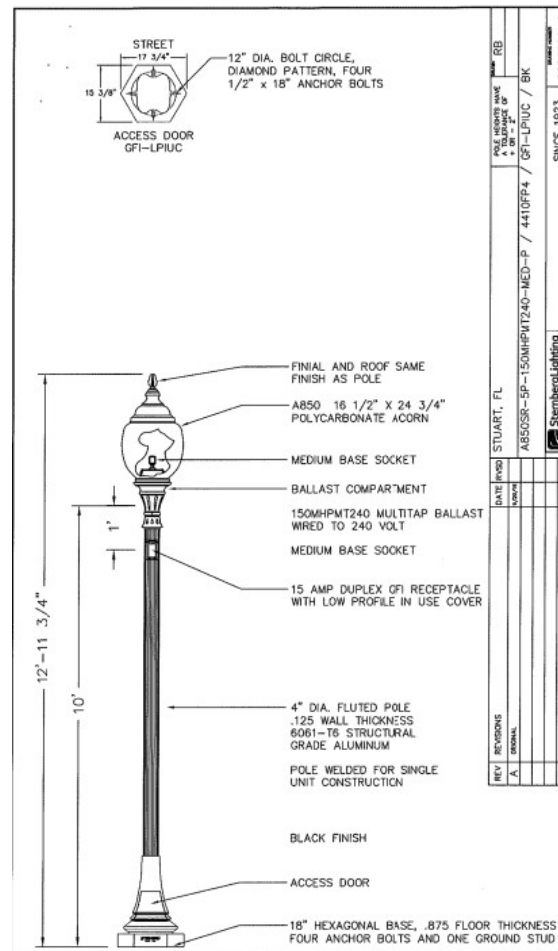
Proposed Streetlights



Proposed Streetlights

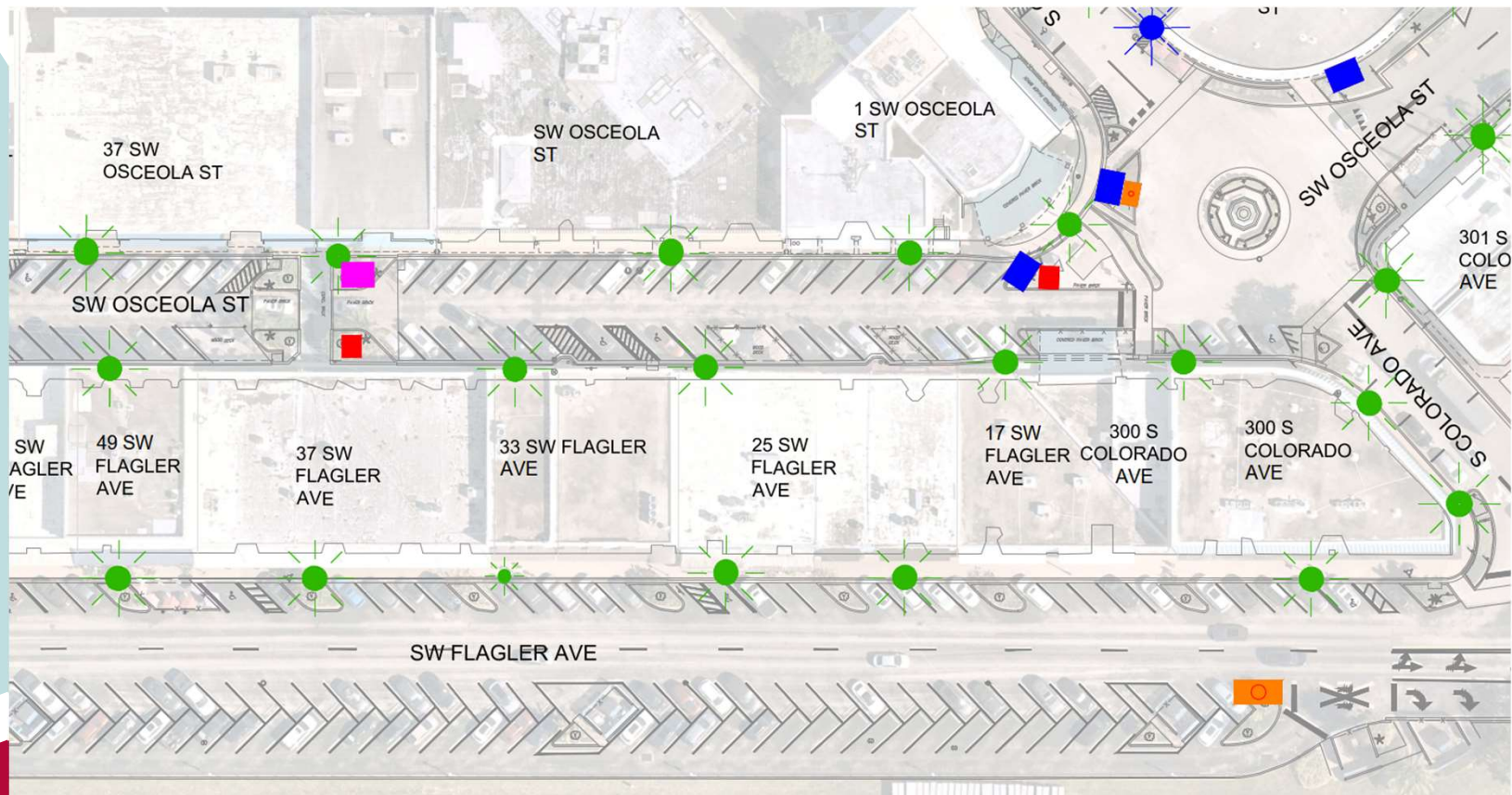


Proposed Streetlights



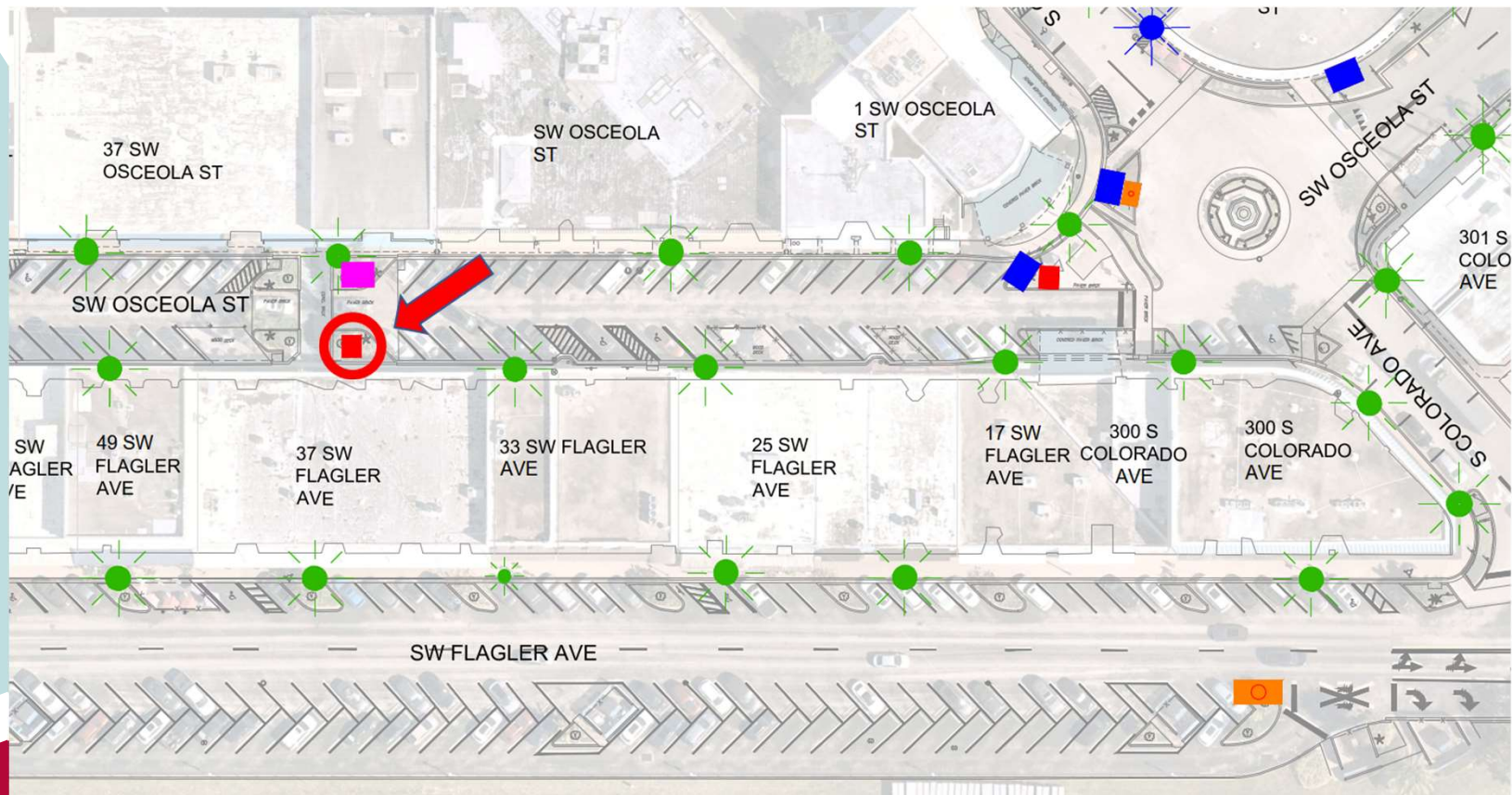
Equipment Visualization Example

Location: 37 SW Flagler Ave



Equipment Visualization Example

Location: 37 SW Flagler Ave





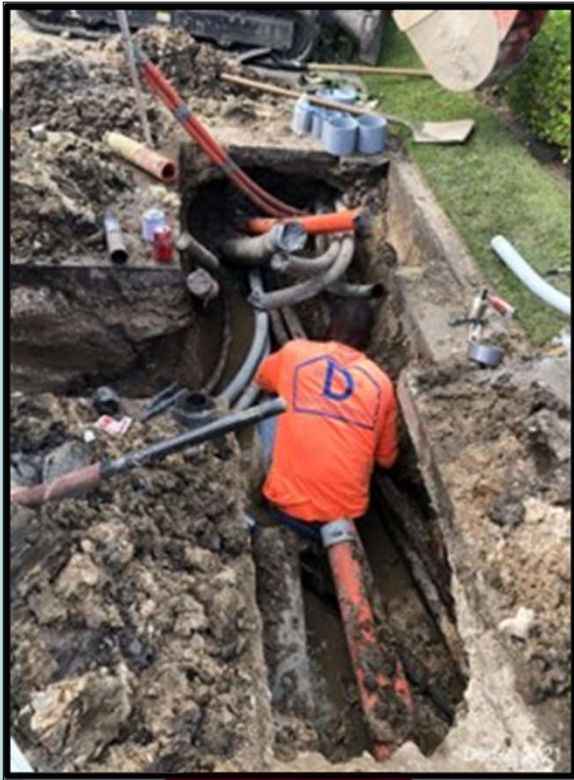


What to Expect During Construction



Conduit Installation (Directional Boring)

What to Expect During Construction



Conduit Installation (Open Cut Trenching)

What to Expect During Construction



Equipment Installation



Wire Terminations

What to Expect During Construction



Service Installation

What to Expect During Construction



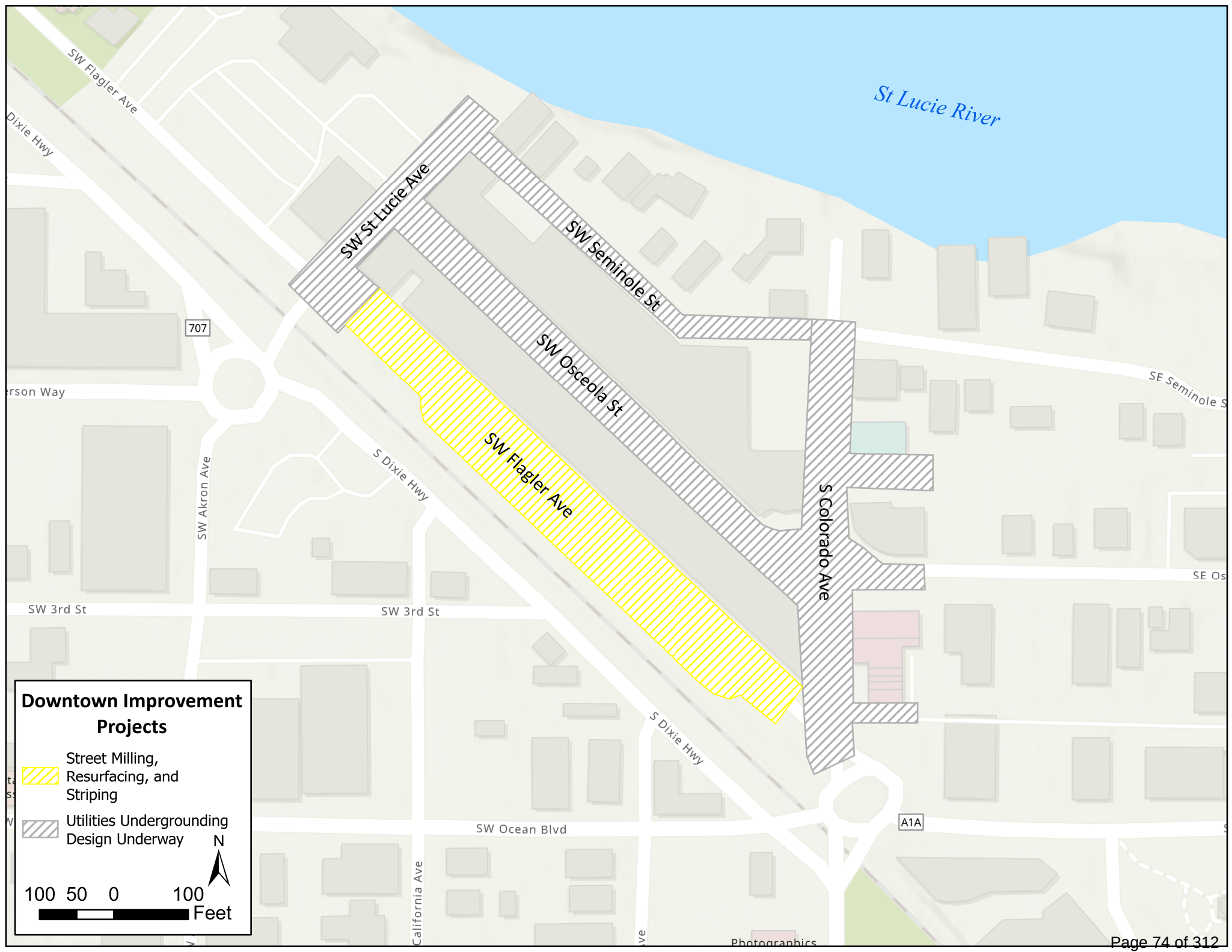
Pavement Restoration / Pole Removal

Current Project Schedule

Item	Target Completion
Easement Acquisition	January 2023
Finalize Utility Owner Designs	December 2022 / January 2023
Final Design Plans	January 2023
Bidding / Award / Start Construction	April 2023
Construction Completion	April 2024



Questions?



Downtown Improvement Projects

Street Milling, Resurfacing, and Striping

Utilities Undergrounding Design Underway

N

100 50 0 100 Feet

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Michael Mortell

Title of Item:

BRIEF HISTORY OF THE KANNER LLC APPROVAL PROCESS.

Summary Explanation/Background Information on Agenda Request:

In August 2021, the City Commission heard a petition to assign a Future Land Use and an application for a Planned Unit Development required by Neighborhood Special District Land Use for the property located at 3172 known as the Kanner LLC PUD. After more than 14 hours of presentation and deliberation, the City Commission assigned the Future Land Use of Neighborhood Special District and approved the application for a Planned Unit Development with 39 conditions allowing a Costco, retail and multi-family apartments. The density authorized by the commission is limited to 8.1 units per acre. Low Density Residential allows up to 8.7 units per acre by code. Commercial, Multi-Family and Office/Residential Land uses authorize up to 10 units per acre without Commission approval. Neighborhood Special District does not allow any density or development without Commission approval. A Petition was filed challenging the Future Land Use Map amendment but the appeal did not challenge the Costco, the retail or the multi-family development. The challenge could have addressed the site plan and zoning approvals but the Petitioner elected to limit that review to the Future Land Use. The purpose of the presentation is to provide background and history regarding the process followed and address the current status of the matter. The agenda item is not for the purpose of revisiting or amending the Ordinance. There is no request filed to amend the ordinance in any way. Staff will provide a brief presentation and answer questions from the Commissioners. The Commission will not be asked to vote on any issues during this agenda item.

Funding Source:

N/A

Recommended Action:

Watch the presentation.

ATTACHMENTS:

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Susej Meleqi

Title of Item:

APPROVAL OF 08/22/2022 CCM MINUTES (RC)

Summary Explanation/Background Information on Agenda Request:

APPROVAL OF 08/22/2022 CCM MINUTES

Funding Source:

N/A

Recommended Action:

Approve minutes.

ATTACHMENTS:

1. 08222022 CCM Minutes

MINUTES
REGULAR MEETING OF THE STUART CITY COMMISSION
AUGUST 22, 2022
AT 5:30 PM
COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION

Mayor Merritt Matheson
Vice Mayor Troy McDonald
Commissioner Becky Bruner
Commissioner Eula R. Clarke
Commissioner Mike Meier

ADMINISTRATIVE

City Manager, David Dyess
City Attorney, Michael J. Mortell
City Clerk, Mary R. Kindel

ROLL CALL

5:32 PM

PRESENT: Mayor Matheson, Commissioner Bruner, Commissioner Clarke, Commissioner Meier

ABSENT: Vice Mayor McDonald

PLEDGE OF ALLEGIANCE

COMMENTS BY CITY COMMISSIONERS

Mayor Matheson announced that tonight is special because it is Commissioner Meier's last meeting. He complimented Commissioner Meier on his 4 years of service to the public.

Commissioner Bruner

- Commented that she will miss Commissioner Meier and thanked him for all he has done.

City Manager Dyess thanked Commissioner Meier and presented him with a card and a gift on behalf of the staff and Commissioners.

Patricia Christensen, Executive Director of the Treasure Coast Regional League of Cities, read a letter from Jolien Caraballo, Vice Mayor of Port Saint Lucie to Commissioner Meier, shared stories of Commissioner Meier, and thanked him for all he has done within the Treasure Coast Regional League of Cities. Ms. Christensen presented Commissioner Meier with a plaque.

Commissioner Meier

- Thanked all for the comments and stated he is thankful to the staff for being there for them as a Commission and for the citizens, thankful to his colleagues, former Commissioner/Mayor Glass Leighton, and the public for their involvement. In the past four years, noted some of the highlights: alternative water supply project, increased parks, and form-based code.

Mayor Matheson

- Commented on the last LOSOM Meeting being beneficial and provided updates from the meeting.

Commissioner Clarke

- Stated that unfortunately she had to leave the room, but complimented Mike Meier and stated that he made positive marks on the City.
- Commented on the LOSOM Meeting and Lake Okeechobee, commended Ben Hogarth, Mayor Matheson, and David Dyess for their part in maintaining clean water for the City.

COMMENTS BY CITY MANAGER

5:59 PM

City Manager Dyess

- Informed the Commission that Vice Mayor McDonald was absent because he was in Tallahassee.
- Request to continue Item #5 to a date certain of September 12, 2022 CCM.

APPROVAL OF AGENDA

6:00 PM MOTION: Approve with Item #5 continued to date certain of September 12, 2022.

MOVED BY: Eula Clarke

SECONDED BY: Mike Meier

Motion approved unanimously. 4/1; 4 in Favor and 1 Absent.

COMMENTS FROM THE PUBLIC (3 Minutes Max.)

1) Helen McBride - Flamingo Avenue; Thanked Commissioner Meier for his service to the City and stated he has done wonders for the City and she hopes to see him on a future board.

2) Mark Brechbill - Flamingo Avenue; Thanked Commissioner Meier for his service and stated that he knows it can sometimes be a thankless job and appreciates the dedication he put in.

CONSENT CALENDAR

1. APPROVAL OF 08/08/2022 CCM MINUTES
2. APPROVAL OF 08/15/2022 SCM BUDGET WORKSHOP #2

END OF CONSENT CALENDAR

6:03 PM MOTION: Approve.

MOVED BY: Eula Clarke

SECONDED BY: Mike Meier

Motion approved unanimously. 4/1; 4 in Favor and 1 Absent.

COMMISSION ACTION

3. EASEMENT WITH FPL FOR TRANSFORMER PLACEMENT AT WTP (RC):

RESOLUTION 67-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT AGREEMENT BETWEEN THE CITY OF STUART, FLORIDA AND FLORIDA POWER & LIGHT ("FPL") FOR A TEN (10) FOOT WIDE EASEMENT RELATED TO THE PLACEMENT OF A TRANSFORMER ON THE WATER TREATMENT PLANT PARCEL, RESCINDING ALL RESOLUTIONS IN CONFLICT, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

6:04 PM MOTION: Approve.

MOVED BY: Mike Meier

SECONDED BY: Becky Bruner

Motion approved unanimously. 4/1; 4 in Favor and 1 Absent.

ORDINANCE SECOND READING

4. WATERBLASTING - MAJOR AMENDMENT TO IPUD (QUASI-JUDICIAL) (RC):

ORDINANCE No. 2497-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE WATERBLASTING INDUSTRIAL PLANNED UNIT DEVELOPMENT (IPUD) LOCATED ON THE SOUTH SIDE OF MARKET STREET AND WEST OF COMMERCE AVE TO ALLOW THE ADDITION OF 28,936 SQUARE FEET OF INDUSTRIAL/WAREHOUSE BUILDING; APPROVING A FINAL SITE PLAN; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR CERTAIN DEVELOPMENT DOCUMENTS AND CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Mary Kindel, City Clerk, swore in two people, Erin Wohlitka, Interim Development Director, and Deanna Foriere of Economic Development Council Engineering.

Ms. Wohlitka presented the site location, spoke on the condition from first reading by the

Commission, presented the revision that was done by the applicant, and recommended approval of Ordinance No. 2497-2022.

Ms. Foriere came forward and stated that she was happy to have been able to meet the condition the Commissioners proposed.

6:11 PM MOTION: Approve.

MOVED BY: Becky Bruner

SECONDED BY: Mike Meier

Motion approved unanimously. 4/1; 4 in Favor and 1 Absent.

5. REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES (RC):

ORDINANCE No. 2488-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

PULLED - CONTINUED TO DATE CERTAIN OF SEPTEMBER 12, 2022

ORDINANCE FIRST READING

DISCUSSION AND DELIBERATION

ADJOURNMENT

6:12 PM

Mary R. Kindel, City Clerk

Minutes to be approved at the Regular Commission Meeting this 12th day of September, 2022.

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Timothy Voelker, Janine Wilde

Title of Item:

SR-5/US-1 SE CONTRACTORS WAY TO N. JENSEN BEACH BLVD - FDOT AGREEMENT (RC):

RESOLUTION No. 72-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT (AT UTILITY EXPENSE) FOR THE ADJUSTMENT OF CITY OF STUART'S UTILITY FACILITIES FOR THE SR-5/US-1 FROM SE CONTRACTORS WAY TO N. JENSEN BEACH BLVD. PROJECT; DESIGNATING AUTHORIZED REPRESENTATIVE; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The Florida Department of Transportation (FDOT) will be milling and resurfacing SR-5/US-1 from SE Contractors Way to N. Jensen Beach Blvd. As part of the FDOT milling and resurfacing project, adjustments to the City of Stuart's Utility Facilities are necessary. Specifically, the milling and resurfacing requires existing valve boxes and manhole covers to be adjusted. The utility work will be completed by the FDOT contractor (at City of Stuart Utility expense); therefore, a joint agreement between the City of Stuart and FDOT is required. The utility work is currently anticipated to cost \$10,080.00.

Funding Source:

Funds will be from the Water & Sewer Non-Operating - Contingency Reserve account included in the FY23 budget.

Recommended Action:

Move approval of Resolution No. 72-2022.

ATTACHMENTS:

1. Resolution No. 72-2022 SR-5US-1 SE Contractors Way to N. Jensen Beach Blvd - FDOT Agreement
2. FDOT Agreement



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION NUMBER 72-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT (AT UTILITY EXPENSE) FOR THE ADJUSTMENT OF CITY OF STUART'S UTILITY FACILITIES FOR THE SR-5/US-1 FROM SE CONTRACTORS WAY TO N. JENSEN BEACH BLVD. PROJECT; DESIGNATING AUTHORIZED REPRESENTATIVE; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the Florida Department of Transportation (FDOT), is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as SR-5/US-1 from SE Contractors Way to N. Jensen Beach Blvd., State Road No.: 5, hereinafter referred to as the "Project"; and

WHEREAS, the Utility Agency/Owner (UAO) owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, installed, or placed out of service pursuant to this Agreement); and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, installation, adjustment or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

WHEREAS, the FDOT and the UAO desire to enter into a joint agreement pursuant to Section 337.403(1)(b), Florida Statutes for the Utility Work to be accomplished by the FDOT's contractor as part of the construction of the Project; and

WHEREAS, the UAO, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The City Commission of the City of Stuart, Florida authorizes the Mayor to execute a State of Florida Department of Transportation Utility Work By Highway Contractor Agreement (At Utility Expense) for the adjustment of City of Stuart's Utility Facilities for the SR-5/US-1 from SE Contractors Way to N. Jensen Beach Blvd. Project.

SECTION 2: This resolution shall take effect on adoption.

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this 12th day of September, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MERRITT MATHESON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT UTILITY EXPENSE)

710-010-22
UTILITIES
OGC – 06/19

Financial Project ID: 446110-1-52-02	Federal Project ID:
Financial Project ID:	
Financial Project ID:	
Financial Project ID:	
County: Martin	State Road No.: 5
District Document No:	
Utility Agency/Owner (UAO): City of Stuart	

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**FDOT**", and **City of Stuart**, hereinafter referred to as the "**UAO**";

WITNESSETH:

WHEREAS, the **FDOT**, is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as SR-5/US-1 from SE Contractors Way to N. Jensen Beach Blvd., State Road No.: 5, hereinafter referred to as the "Project"; and

WHEREAS, the **UAO** owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, installed, or placed out of service pursuant to this Agreement); and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, installation, adjustment or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

WHEREAS, the **FDOT** and the **UAO** desire to enter into a joint agreement pursuant to Section 337.403(1)(b), Florida Statutes for the Utility Work to be accomplished by the **FDOT's** contractor as part of the construction of the Project; and

WHEREAS, the **UAO**, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **UAO** hereby agree as follows:

1. Design of Utility Work

- a. **UAO** shall prepare, at **UAO's** sole cost and expense, a final engineering design, plans, technical special provisions, a cost estimate, and a contingency Utility Work Schedule (said contingency schedule to be used in the case of a bid rejection) for the Utility Work (hereinafter referred to as the "Plans Package") on or before N/A, year of _____.
- b. The Plans Package shall be in the same format as the **FDOT's** contract documents for the Project and shall be suitable for reproduction.
- c. Unless otherwise specifically directed in writing, the Plans Package shall include any and all activities and work effort required to perform the Utility Work, including but not limited to, all clearing and grubbing, survey work and shall include a traffic control plan.
- d. The Plans Package shall be prepared in compliance with the **FDOT's** Utility Accommodation Manual and the **FDOT's** Plans Preparation Manual in effect at the time the Plans Package is prepared, and the **FDOT's** contract documents for the Project. If the **FDOT's** Plans Preparation Manual has been updated and conflicts with the Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT UTILITY EXPENSE)

710-010-22
UTILITIES
OGC – 06/19

- e. The technical special provisions which are a part of the Plans Package shall be prepared in accordance with the **FDOT's** guidelines on preparation of technical special provisions and shall not duplicate or change the general contracting provisions of the **FDOT's** Standard Specifications for Road and Bridge Construction and any Supplemental Specifications, Special Provisions, or Developmental Specifications of the **FDOT** for the Project.
- f. **UAO** shall provide a copy of the proposed Plans Package to the **FDOT**, and to such other right of way users as designated by the **FDOT**, for review at the following stages: Production. Prior to submission of the proposed Plans Package for review at these stages, the **UAO** shall send the **FDOT** a work progress schedule explaining how the **UAO** will meet the **FDOT's** production schedule. The work progress schedule shall include the review stages, as well as other milestones necessary to complete the Plans Package within the time specified in Subparagraph a. above.
- g. In the event that the **FDOT** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **FDOT** will notify the **UAO** in writing of the deficiencies and the **UAO** will correct the deficiencies and return corrected documents within the time stated in the notice. The **FDOT's** review and approval of the documents shall not relieve the **UAO** from responsibility for subsequently discovered errors or omissions.
- h. The **FDOT** shall furnish the **UAO** such information from the **FDOT's** files as requested by the **UAO**; however, the **UAO** shall at all times be and remain solely responsible for proper preparation of the Plans Package and for verifying all information necessary to properly prepare the Plans Package, including survey information as to the location (both vertical and horizontal) of the Facilities. The providing of information by the **FDOT** shall not relieve the **UAO** of this obligation nor transfer any of that responsibility to the **FDOT**.
- i. The Facilities and the Utility Work will include all utility facilities of the **UAO** which are located within the limits of the Project, except as generally summarized as follows: Everything not specifically included in the scope of services. These exceptions shall be handled by separate arrangement.
- j. If any facilities of the **UAO** located within the project limits are discovered after work on the project commences to be qualified for relocation at the **FDOT's** expense, but not previously identified as such, the **UAO** shall file a claim with the **FDOT** for recovery of the cost of relocation thereof. The filing of the claim shall not necessarily entitle the **UAO** to payment, and resolution of the claim shall be based on a determination of fault for the error. The discovery of facilities not previously identified as being qualified for relocation at the **FDOT's** expense shall not invalidate this Agreement.
- k. The **UAO** shall fully cooperate with all other right of way users in the preparation of the Plans Package. Any conflicts that cannot be resolved through cooperation shall be resolved in the manner determined by the **FDOT**.
- l. Upon completion of the Utility Work, the Facilities shall be deemed to be located on the public road or publicly owned rail corridor under and pursuant to the Utility Permit: TBD
(Note: *It is the intent of this line to allow either attachment of or separate reference to the permit*).

2. Performance of Utility Work

- a. The **FDOT** shall incorporate the Plans Package into its contract for construction of the Project.
- b. The **FDOT** shall procure a contract for construction of the Project in accordance with the **FDOT's** requirements.
- c. If the portion of the bid of the contractor selected by the **FDOT** which is for performance of the Utility Work exceeds the **FDOT's** official estimate for the Utility Work by more than ten percent (10%) and

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT UTILITY EXPENSE)

710-010-22
UTILITIES
OGC – 06/19

the **FDOT** does not elect to participate in the cost of the Utility Work pursuant to Section 337.403(1)(b), Florida Statutes, the **UAO** may elect to have the Utility Work removed from the **FDOT's** contract by notifying the **FDOT** in writing within 10 days from the date that the **UAO** is notified of the bid amount. Unless this election is made, the Utility Work shall be performed as part of the Project by the **FDOT's** contractor.

- d. If the **UAO** elects to remove the Utility Work from the **FDOT's** contract in accordance with Subparagraph 2. c., the **UAO** shall perform the Utility Work separately pursuant to the terms and conditions of the **FDOT's** standard relocation agreement, the terms and conditions of which are incorporated herein for that purpose by this reference, and in accordance with the contingency relocation schedule which is a part of the Plans Package. The **UAO** shall proceed immediately with the Utility Work so as to cause no delay to the **FDOT** or the **FDOT's** contractor in constructing the Project.
- e. The **UAO** shall perform all engineering inspection, testing, and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package, except for the following activities: General Engineering Inspection and will furnish the **FDOT** with daily diary records showing approved quantities and amounts for weekly, monthly, and final estimates in accordance with the format required by **FDOT** procedures.
- f. Except for the inspection, testing, monitoring, and reporting to be performed by the **UAO** in accordance with Subparagraph 2. e., the **FDOT** will perform all contract administration for its construction contract.
- g. The **UAO** shall fully cooperate with the **FDOT** and the **FDOT's** contractor in all matters relating to the performance of the Utility Work.
- h. The **FDOT's** engineer has full authority over the Project and the **UAO** shall be responsible for coordinating and cooperating with the **FDOT's** engineer. In so doing, the **UAO** shall make such adjustments and changes in the Plans Package as the **FDOT's** engineer shall determine are necessary for the prosecution of the Project.
- i. The **UAO** shall not make any changes to the Plans Package after the date on which the **FDOT's** contract documents are mailed for advertisement of the Project unless those changes fall within the categories of changes which are allowed by supplemental agreement to the **FDOT's** contract pursuant to Section 337.11, Florida Statutes. All changes, regardless of the nature of the change or the timing of the change, shall be subject to the prior approval of the **FDOT**.

3. Cost of Utility Work

- a. The **UAO** shall be responsible for all costs of the Utility Work and all costs associated with any adjustments or changes to the Utility Work determined by the **FDOT's** engineer to be necessary, including, but not limited to the cost of changing the Plans Package and the increase in the cost of performing the Utility Work, unless the adjustments or changes are necessitated by an error or omission of the **FDOT**. The **UAO** shall not be responsible for the cost of delays caused by such adjustments or changes unless they are attributable to the **UAO** pursuant to Subparagraph 4.a.
- b. The initial estimate of the cost of the Utility Work is 10,080.00. At such time as the **FDOT** prepares its official estimate, the **FDOT** shall notify the **UAO** of the amount of the official estimate for the Utility Work. Upon being notified of the official estimate, the **UAO** shall have five (5) working days within which to accept the official estimate for purposes of making deposits and for determining any possible contribution on the part of the **FDOT** to the cost of the Utility Work, or to elect to have the Utility Work removed from the **FDOT's** contract and performed separately pursuant to the terms and conditions set forth in Subparagraph 2. d. hereof.
- c. At least forty-five (45) calendar days prior to the date on which the **FDOT** advertises the Project for

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bids, the **UAO** will pay to the **FDOT** an amount equal to the **FDOT's** official estimate; plus 2% for mobilization of equipment for the Utility Work, additional maintenance of traffic costs for the Utility Work, administrative costs of field work, tabulation of quantities, Final Estimate processing and Project accounting (said amounts are to be hereinafter collectively referred to as the Allowances); plus 10% of the official estimate for a contingency fund to be used as hereinafter provided for changes to the Utility Work during the construction of the Project (the Contingency Fund).

d. Payment of the funds pursuant to this paragraph will be made (choose one):

- ☐ directly to the **FDOT** for deposit into the State Transportation Trust Fund.
- ☒ as provided in the attached Three Party Escrow Agreement between **UAO**, **FDOT** and the State of Florida, Department of Financial Services, Division of Treasury. Deposits of less than \$100,000.00 must be pre-approved by the **FDOT** Comptroller's Office prior to execution of this agreement.

- e. If the portion of the contractor's bid selected by the **FDOT** for performance of the Utility Work exceeds the amount of the deposit made pursuant to Subparagraph c. above, then subject to and in accordance with the limitations and conditions established by Subparagraph 2. c. hereof regarding **FDOT** participation in the cost of the Utility Work and the **UAO's** election to remove the Utility Work from the Project, the **UAO** shall, within fourteen (14) calendar days from notification from the **FDOT** or prior to posting of the accepted bid, whichever is earlier, pay an additional amount to the **FDOT** to bring the total amount paid to the total obligation of the **UAO** for the cost of the Utility Work, plus Allowances and 10% Contingency Fund. The **FDOT** will notify the **UAO** as soon as it becomes apparent the accepted bid amount plus allowances and contingency is in excess of the advance deposit amount; however, failure of the **FDOT** to so notify the **UAO** shall not relieve the **UAO** from its obligation to pay for its full share of project costs on final accounting as provided herein below. In the event that the **UAO** is obligated under this Subparagraph 3.e. to pay an additional amount and the additional amount that the **UAO** is obligated to pay does not exceed the Contingency Fund already on deposit, the **UAO** shall have sixty (60) calendar days from notification from the **FDOT** to pay the additional amount, regardless of when the accepted bid is posted.
- f. If the accepted bid amount plus allowances and contingency is less than the advance deposit amount, the **FDOT** will refund the amount that the advance deposit exceeds the bid amount, plus allowances and contingency if such refund is requested by the **UAO** in writing and approved by the Comptroller of the **FDOT** or his designee.
- g. Should contract modifications occur that increase the **UAO's** share of total project costs, the **UAO** will be notified by the **FDOT** accordingly. The **UAO** agrees to provide, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the **FDOT** is sufficient to fully fund its share of the project costs. The **FDOT** shall notify the **UAO** as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the **FDOT** to so notify the **UAO** shall not relieve the **UAO** from its obligation to pay for its full share of project costs on final accounting as provided herein below.
- h. The **FDOT** may use the funds paid by the **UAO** for payment of the cost of the Utility Work. The Contingency Fund may be used for increases in the cost of the Utility Work which occur because of quantity overruns or because of adjustments or changes in the Utility Work made pursuant to Subparagraph 2. h. Prior to using any of the Contingency Fund, the **FDOT** will obtain the written concurrence of the person delegated that responsibility by written notice from the **UAO**. The delegatee shall respond immediately to all requests for written concurrence. If the delegatee refuses to provide written concurrence promptly and the **FDOT** determines that the work is necessary, the **FDOT** may proceed to perform the work and recover the cost thereof pursuant to the provisions of Section 337.403(3), Florida Statutes. In the event that the Contingency Fund is depleted, the **UAO** shall, within fourteen (14) calendar days from notification from the **FDOT**, pay to the **FDOT** an additional 10% of the total obligation of the **UAO** for the cost of the Utility Work established under

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Subparagraph 3. e. for future use as the Contingency Fund.

- i. Upon final payment to the Contractor, the **FDOT** intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days. All project cost records and accounts shall be subject to audit by a representative of the **UAO** for a period of three (3) years after final close out of the Project. The **UAO** will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the **FDOT** to the **UAO** in accordance with Section 215.422, Florida Statutes. In the event said final accounting of total project costs is greater than the total deposits to date, the **UAO** will pay the additional amount within forty (40) calendar days from the date of the invoice. The **UAO** agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within the time specified in the preceding sentence until the invoice is paid.

4. Claims Against UAO

- a. The **UAO** shall be responsible for all costs incurred as a result of any delay to the **FDOT** or its contractors caused by errors or omissions in the Plans Package (including inaccurate location of the Facilities) or by failure of the **UAO** to properly perform its obligations under this Agreement in a timely manner.
- b. In the event the **FDOT's** contractor provides a notice of intent to make a claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the notice of intent and the **UAO** will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- c. In the event the **FDOT's** contractor makes any claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the claim and the **UAO** will cooperate with the **FDOT** in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the **UAO** and the **FDOT's** contractor shall be in writing, shall be subject to written **FDOT** concurrence and shall specify the extent to which it resolves the claim against the **FDOT**.
- d. The **FDOT** may withhold payment of surplus funds to the **UAO** until final resolution (including any actual payment required) of all claims relating to the Utility Work. The right to withhold shall be limited to actual claim payments made by the **FDOT** to the **FDOT's** contractor.

5. Out of Service Facilities

No Facilities shall be placed out of service unless specifically identified as such in the Plans. The following terms and conditions shall apply to Facilities placed Out-of-Service:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for out of service Facilities.
- b. The **FDOT** agrees to allow the **UAO** to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by the **UAO**. In the event of a breach of this Agreement by the **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph e. below.
- c. The **UAO** shall take such steps to secure the Facilities and otherwise make the Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the **UAO** to use due care in its dealings with others. The **UAO** shall be solely responsible for gathering all information necessary to meet these obligations.
- d. The **UAO** shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests of the **FDOT** or other permittees using or seeking use of the right of

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way.

- e. The **UAO** shall remove the Facilities at the request of the **FDOT** in the event that the **FDOT** determines that removal is necessary for **FDOT** use of the right of way or in the event that the **FDOT** determines that use of the right of way is needed for other active utilities that cannot be otherwise accommodated in the right of way. Removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto. Removal shall be completed within the time specified in the **FDOT's** notice to remove. In the event that the **UAO** fails to perform the removal properly within the specified time, the **FDOT** may proceed to perform the removal at the **UAO's** expense pursuant to the provisions of Sections 337.403 and 337.404, Florida Statutes.
- f. Except as otherwise provided in Subparagraph e. above, the **UAO** agrees that the Facilities shall forever remain the legal and financial responsibility of the **UAO**. The **UAO** shall reimburse the **FDOT** for any and all costs of any nature whatsoever resulting from the presence of the Facilities within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Facilities or from the presence of any hazardous substance or material in or discharging from the Facilities. Nothing in this paragraph shall be interpreted to require the **UAO** to indemnify the **FDOT** for the **FDOT's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **UAO**.

6. Default

- a. In the event that the **UAO** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:
 - (1) Terminate this Agreement if the breach is material and has not been cured within sixty (60) days from written notice thereof from **FDOT**.
 - (2) Pursue a claim for damages suffered by the **FDOT**.
 - (3) If the Utility Work is reimbursable under this Agreement, withhold reimbursement payments until the breach is cured. The right to withhold shall be limited to actual claim payments made by **FDOT** to third parties.
 - (4) If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the **FDOT** or the public against payments due under this Agreement for the same Project. The right to offset shall be limited to actual claim payments made by **FDOT** to third parties.
 - (5) Suspend the issuance of further permits to the **UAO** for the placement of Facilities on **FDOT** property if the breach is material and has not been cured within sixty (60) days from written notice thereof from **FDOT**.
 - (6) Pursue any other remedies legally available.
 - (7) Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3), Florida Statutes.
- b. In the event that the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
 - (1) Terminate this Agreement if the breach is material and has not been cured within sixty (60) days from written notice thereof from the **UAO**.

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- (2) If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.
 - (3) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties nor from any statutory obligations that either party may have with regard to the subject matter hereof.

7. Force Majeure

Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

8. Indemnification

FOR GOVERNMENT-OWNED UTILITIES,

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT-OWNED UTILITIES,

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement

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negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication of judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

9. Miscellaneous

- a. Time is of essence in the performance of all obligations under this Agreement.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the current Utility Accommodation Manual in effect at the time the Plans Package is prepared and the current utility permit for the Facilities; provided, however, that the **UAO** shall not be obligated to protect or maintain any of the Facilities to the extent the **FDOT's** contractor has that obligation as part of the Utility Work pursuant to the **FDOT's** specifications.
- c. The **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.
- d. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written policies and procedures which may be applicable at the time of the Project and the relocation of the Facilities.
- e. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the **UAO**:

Tim Voelker, P.E., Utilities & Engineering Director
121 SW Flagler Avenue, Stuart, FL 34994
tvoelker@ci.stuart.fl.us (772)288-5332

If to the **FDOT**:

Kadian McLean, District Utilities Administrator
3400 W. Commercial Blvd., Ft. Lauderdale, FL 33309
Kadian.McLean@dot.state.fl.us (954)777-4128

10. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled Changes To Form Document and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for

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reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled Changes to Form Document.

You MUST signify by selecting or checking which of the following applies:

- ☒ No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- ☐ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

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

UTILITY: City of Stuart

BY: (Signature) _____ DATE: _____

(Typed Name: _____)

(Typed Title: _____)

Recommend Approval by the District Utility Office

BY: (Signature) _____ DATE: _____

FDOT Legal review

BY: (Signature) _____ DATE: _____

District Counsel

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

BY: (Signature) _____ DATE: _____

(Typed Name: Steven C. Braun, P.E.)

(Typed Title: Director of Transportation Development)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____ DATE: _____

(Typed Name: _____)

(Typed Title: _____)

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Attachments

446110-1-52-02

1. Exhibit A – Scope of Services
2. Three Party Escrow Agreement
3. Appendix A of Assurances

EXHIBIT A

Scope of Services 446110-1-52-02

The utility work to be performed under this agreement consists of adjustment of City of Stuart Water Utilities facilities per plans dated June 9, 2022, by Protean Design Group.

Summary of Quantities

No.	Item Description	Unit	Quantity
0425-6	ADJUST VALVE/VALVE BOX	EA	12
0425-5-1	ADJUST MANHOLE COVER	EA	4

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), City of Stuart ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: SR-5/US-1 from SE Contractors Way to N. Jensen Beach Blvd.
Project #: 446110-1-52-02
County: Martin

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest-bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.
7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the

escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.

9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

59-3024028
Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date

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REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS
(Appendix A of Assurances)

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Financial Project ID: 446110-1-52-02	Federal Project ID:
County: Martin	State Road No.: 5
District Document No:	
Utility Agency/Owner (UAO): City of Stuart	

During the performance of this Agreement, the **Utility Agency Owner (UAO)**, for itself, its assignees and successors in interest (**hereinafter referred to as the UAO**), agrees as follows:

(1) **Compliance with Regulations:** The **UAO** will comply with the Regulations of the **FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT)** relative to nondiscrimination in Federally-assisted programs of the **DEPARTMENT** (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The **UAO**, with regard to the work performed by it after award and prior to completion of the **UAO** work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors, including procurement of materials or leases of equipment. The **UAO** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A & B of the Regulations.

(3) **Solicitations:** In all solicitations either by competitive bidding or negotiation made by the **UAO** for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the **UAO** of the **UAO's** obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

(4) **"Buy America" Requirements:** The **UAO** will use domestic steel and/or iron products incorporated into the finished work in compliance with the Buy America provisions of 23 CFR 635.410 as amended. As used in this provision, "steel and/or iron products" means manufactured products that are predominately steel and/or iron products and that are not otherwise exempt from Buy America requirements pursuant to rules and regulations of the Federal Highway Administration. As used in this provision, "domestic" means products that are manufactured in the United States which have not undergone any manufacturing process outside of the United States that modified the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through final shaping and coating. If a steel and/or iron product is taken outside the United States for any manufacturing process, it becomes foreign source steel and/or iron products. The **UAO** may incorporate into the finished work foreign source steel and/or iron products as long as the actual cost of such foreign products does not exceed 0.1% of the total amount of this Agreement, or \$2,500.00 whichever is greater. The **UAO** will retain documentation verifying compliance with the Buy America provision of this Agreement for a period of 3 years after final payment of the finished work. Upon request, the **UAO** will provide the documentation verifying compliance with the Buy America provision of this Agreement. The **UAO** will provide a certification with the invoice that states the following: "The UAO certifies that all manufactured products that are predominately steel and/or iron are domestic products in compliance with the Buy America provisions of 23 CFR 635.410 as amended except for the foreign source steel and/or iron allowance of 0.1% of the total amount of the agreement between the Florida Department of Transportation and the UAO, or \$2,500.00 whichever is greater."

(5) **Information and Reports:** The **UAO** will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the **UAO** is in the exclusive possession of another who fails or refuses to furnish this information, the **UAO** shall so certify to the **DEPARTMENT** or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

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REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS
(Appendix A of Assurances)

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UTILITIES
OGC-04/17

(6) **Sanctions for Noncompliance:** In the event of the **UAO's** noncompliance with the nondiscrimination provisions of paragraphs (1) through (4), the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the Agreement until the **UAO** complies; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(7) **Incorporation of Provisions:** The **UAO** will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The **UAO** will take such action with respect to any subcontract, procurement or lease as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the **UAO** becomes involved in, or is threatened with, litigation with a subcontractor, supplier or lessor as a result of such direction, the **UAO** may request the State to enter into such litigation to protect the interests of the State, and, in addition, the **UAO** may request the United States to enter into such litigation to protect the interests of the United States.

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Susej Meleqi

Title of Item:

OFFICIAL RESULTS OF THE 2022 PRIMARY ELECTION (RC):

RESOLUTION No. 75-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA CONFIRMING THE RESULTS OF THE 2022 REGULAR PRIMARY MUNICIPAL ELECTION FOR THE CITY COMMISSION GROUP I, GROUP III, AND GROUP V; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

RESOLUTION No. 75-2022; OFFICIAL RESULTS OF THE 2022 PRIMARY ELECTION

Funding Source:

N/A

Recommended Action:

Approve Resolution No. 75-2022.

ATTACHMENTS:

1. R75-2022; 2022 Election Results
2. R75-2022 Attachment - Declaration Official Results City Commissioners
3. R75-2022 Attachment-Official Results Nonpartisan_SOE



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION NUMBER 75-2022

**A RESOLUTION OF THE CITY COMMISSION OF
THE CITY OF STUART, FLORIDA CONFIRMING
THE RESULTS OF THE 2022 REGULAR PRIMARY
MUNICIPAL ELECTION FOR THE CITY
COMMISSION GROUP I, GROUP III, AND GROUP V;
PROVIDING AN EFFECTIVE DATE; AND FOR
OTHER PURPOSES.**

* * * * *

WHEREAS, the results of 2022 Primary Election are now known, and have been officially certified and published by the Martin County Canvassing Board, as required by Section 7.06, Stuart City Charter, a copy of which is attached hereto as Attachment A; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: In Group I, Candidate Campbell Rich received 1,936 of the 3,537 votes cast, and Mark Brechbill received 1,601 of the 3,537, in Group II, Candidate Christopher Collins received 1,855 of the 3,614 and Merritt Matheson received 1,759 of the 3,614 votes cast, and in Group V, Candidate Eula R. Clarke received 1,930 of the 3,618 and William Laughlin 1,688 of the 3,618 votes cast. Respectively the results of which are now known, and which have been certified by the Canvassing Board, and are hereby confirmed by the City Commission as the “Official Results of the August 23, 2022 Primary Election.”

SECTION 2: Campbell Rich received the majority of the votes cast at the August 23, 2022 Primary Election and is declared elected as City Commissioner Group I. The four-year term of office shall commence upon taking the Oath of Office at the Regular City Commission Meeting on September 12, 2022 at 4:00 p.m.

SECTION 3: Christopher Collins received the majority of the votes cast at the August 23, 2022 Primary Election and is declared elected as City Commissioner Group III. The four-year term of office shall commence upon taking the Oath of Office at the Regular City Commission Meeting on September 12, 2022 at 4:00 p.m.

SECTION 4: Eula R. Clarke received the majority of the votes cast at the August 23, 2022 Primary Election and is declared elected as City Commissioner Group V. The four-year term of office shall commence upon taking the Oath of Office at the Regular City Commission Meeting on September 12, 2022 at 4:00 p.m.

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
CAMPBELL RICH, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this 12th day of September, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY



*** OFFICIAL ***

Declaration of Official Results 2022 City of Stuart Municipal Election

We, the undersigned, do hereby declare and confirm receipt of the official results specified in the Nonpartisan Election held on the Twenty-Third day of August, 2022, as shown by the Official Certificate of County Canvassing Board of Martin County on file in the office of the City Clerk. We do hereby declare the Official Results as follows:

City Commissioner Group I, the whole number of votes cast was 3,537 of which

Mark Brechbill	received	1,601 votes
Campbell Rich	received	1,936 votes

City Commissioner Group III, the whole number of votes cast was 3,614 of which

Christopher "Doc" Collins	received	1,855 votes
Merritt Matheson	received	1,759 votes

City Commissioner Group V, the whole number of votes cast was 3,618 of which

Eula R. Clarke	received	1,930 votes
William Laughlin	received	1,688 votes



David Dyess, City Manager

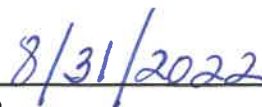


Michael J. Mortell, City Attorney



Mary R. Kindel, City Clerk

Date



8/31/2022

***** Official *****
CERTIFICATE OF COUNTY CANVASSING BOARD
MARTIN COUNTY

We, the undersigned, KATHLEEN ROBERTS, County Judge, VICKI DAVIS, Supervisor of Elections, HAROLD JENKINS, County Commissioner, constituting the Board of County Canvassers in and for said County, do hereby certify that we met on the Twenty-Seventh day of August, 2022 A.D., and proceeded publicly to canvass the votes given for the several offices and persons herein specified at the **Nonpartisan Election** held on the Twenty-Third day of August, 2022 A.D., as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

For Circuit Judge, 19th Judicial Circuit, Group 1, the whole number of votes cast was 34,379 of which

Christian Van Riper	received	9,902 votes
Rebecca White	received	24,477 votes

For Circuit Judge, 19th Judicial Circuit, Group 2, the whole number of votes cast was 33,146 of which

Leatha Dawn Mullins	received	19,103 votes
Alexander Stuart Nelson	received	14,043 votes

For School Board, District 3, the whole number of votes cast was 36,397 of which

Liz Bernstein	received	15,919 votes
Jennifer Russell	received	20,478 votes

For School Board, District 4, the whole number of votes cast was 35,444 of which

Tony Anderson	received	17,555 votes
Amy Pritchett	received	17,889 votes

For City Commissioner Group I City of Stuart, the whole number of votes cast was 3,537 of which

Mark Brechbill	received	1,601 votes
Campbell Rich	received	1,936 votes

For City Commissioner Group III City of Stuart, the whole number of votes cast was 3,614 of which

Christopher "Doc" Collins	received	1,855 votes
Merritt Matheson	received	1,759 votes

For City Commissioner Group V City of Stuart, the whole number of votes cast was 3,618 of which

Eula R. Clarke	received	1,930 votes
William Laughlin	received	1,688 votes

***** Official *****
CERTIFICATE OF COUNTY CANVASSING BOARD
MARTIN COUNTY

For Village Council Seat 3 Village of Indiantown, the whole number of votes cast was 763 of which

Carmine Dipaolo	received	455 votes
Anthony D. Dowling	received	308 votes

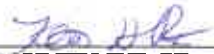
For Village Council Seat 4 Village of Indiantown, the whole number of votes cast was 765 of which

Jackie Gary Clarke	received	361 votes
Angelina Perez	received	404 votes

For Village Council Seat 5 Village of Indiantown, the whole number of votes cast was 752 of which

Janet Rosado	received	241 votes
Susan Gibbs Thomas	received	511 votes

We Certify that pursuant to Section 102.112, Florida Statutes, the canvassing board has compared the number of persons who voted with the number of ballots counted and that the certification includes all valid votes cast in the election.



COUNTY JUDGE



SUPERVISOR OF ELECTIONS



COUNTY COMMISSIONER

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Louis Boglioli

Title of Item:

THIS ITEM SET FOR TIME CERTAIN OF 5:15 PM - TENTATIVE MILLAGE FOR FY 2023 (RC):

RESOLUTION No. 79-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA ADOPTING THE TENTATIVE MILLAGE RATE FOR FISCAL YEAR 2023; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Establish and adopt a Tentative Millage for the City of Stuart, Florida Annual Budget for Fiscal Year 2023.

Funding Source:

N/A

Recommended Action:

Adopt Resolution 79-2022.

ATTACHMENTS:

1. Resolution_2023_R79-2022_Tentative_Millage_Rate_FY_2023



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION No. 79-2022

**A RESOLUTION OF THE CITY COMMISSION OF
THE CITY OF STUART, FLORIDA ADOPTING THE
TENTATIVE MILLAGE RATE FOR FISCAL YEAR
2023; PROVIDING AN EFFECTIVE DATE; AND FOR
OTHER PURPOSES.**

* * * * *

WHEREAS, the City Commission has this date held a properly advertised public hearing pursuant to the requirements of §200.065, Florida Statutes, to adopt a tentative millage rate for the 2022-2023 fiscal year; and

WHEREAS, the City Commission has discussed “the percentage increase in millage over the rolled-back rate necessary to fund the budget, if any, and the specific purposes for which *ad valorem* tax revenues are being increased;” and

WHEREAS, the City Commission has proposed to maintain the millage; and

WHEREAS, the public has been allowed to speak and ask questions regarding the tentative millage rate prior to its adoption, and the City Commission has explained the reasons for the lower rolled-back rate; and

WHEREAS, the City Commission has amended the proposed budget for fiscal year 2022-2023 and recomputed the proposed millage rate and has announced publicly “the percent, if any, by which the recomputed proposed millage rate exceeds the rolled-back rate.”

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The tentative millage rate for the 2022-2023 fiscal year of the City of Stuart, Florida shall be \$5.00 per \$1,000.00 of Assessed Property Value as certified by the Martin County Property

Resolution No. 79-2022
Tentative Millage for FY 2023

Appraiser. This rate is also expressed as 5.0000 mills. The tentative millage rate exceeds the tentative rolled-back rate by 7.50%. This is an increase in the property tax rate as tentatively adopted.

SECTION 2: A public hearing to finalize the budget and adopt a final millage shall be held **September 26, 2022**, at 5:15 PM at City Hall, 121 SW Flagler Avenue, Stuart, Florida. The City Clerk shall publish the advertisement therefore according to law.

SECTION 3: This resolution shall take effect on adoption.

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
CAMPBELL RICH, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this ____ day of _____, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Louis Boglioli

Title of Item:

THIS ITEM SET FOR TIME CERTAIN OF 5:15 PM - FIRE ASSESSMENT FOR FY 2023 (RC):

RESOLUTION No. 80-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, APPROVING THE FISCAL YEAR 2022-23 NON-AD VALOREM ASSESSMENT ROLL FOR FIRE PROTECTION SERVICES, FACILITIES AND PROGRAMS; DIRECTING CERTIFICATION OF THE ASSESSMENT ROLL TO THE MARTIN COUNTY TAX COLLECTOR; AND PROVIDING AN EFFECTIVE DATE.

Summary Explanation/Background Information on Agenda Request:

Establishes the annual assessment for Fire Protection Services for Fiscal Year 2023

Funding Source:

N/A

Recommended Action:

Adopt Resolution 80-2022

ATTACHMENTS:

1. Resolution_2023_R80-2022_FireAssessment_FY_2023



BEFORE THE CITY COMMISSION

CITY OF STUART, FLORIDA

RESOLUTION NUMBER 80-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, APPROVING THE FISCAL YEAR 2022-23 NON-AD VALOREM ASSESSMENT ROLL FOR FIRE PROTECTION SERVICES, FACILITIES AND PROGRAMS; DIRECTING CERTIFICATION OF THE ASSESSMENT ROLL TO THE MARTIN COUNTY TAX COLLECTOR; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY. This Resolution of the City of Stuart, Florida (the "City"), is adopted pursuant to City Ordinance No. 2271 (as currently codified in Article V, Division 6 of the City of Stuart Code of Ordinances, the "Assessment Ordinance"), City Resolution No. 142-2013 (as amended and supplemented from time to time, and particularly as amended and supplemented by Resolution No. 21-2014, the "Initial Assessment Resolution"), sections 166.021, 166.041 and 197.3632, Florida Statutes, and other applicable provisions of law.

SECTION 2. DEFINITIONS. This resolution constitutes the Annual Assessment Resolution for the Fiscal Year commencing October 1, 2022 (the "Fiscal Year 2022-23"). All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Assessment Ordinance

and the Initial Assessment Resolution. Unless the context indicates otherwise, words imparting the singular number include the plural number, and vice versa.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared as follows:

(A) Pursuant to the Assessment Ordinance, the City Commission adopted the Initial Assessment Resolution imposing special assessments (the "Fire Protection Assessments") to provide for the annual funding of fire protection services, facilities and programs commencing with Fiscal Year 2014-15, and providing for collection of the Fire Protection Assessments pursuant to the tax bill method authorized by the Uniform Assessment Collection Act.

(B) On October 28, 2013, the City Commission adopted Resolution No. 127-2013, expressing its intent to use the tax bill collection method authorized by the Uniform Assessment Collection Act for collection of annual non-ad valorem assessments, including the Fire Protection Assessments, commencing with the tax bill mailed by the Tax Collector in November, 2014.

(C) The Assessment Ordinance provides for the adoption of an Annual Assessment Resolution for each Fiscal Year approving, confirming or amending the Assessment Roll.

(D) Certain Tax Parcels which were not previously subject to the Fire Protection Assessments are being added to the Assessment Roll for Fiscal Year 2022-23. Such parcels, a list of which is on file with the City Clerk and incorporated herein by reference, receive the several special benefits described in the Initial Assessment Resolution from the City's provision of fire protection services, facilities and programs (the "Newly Assessed Parcels").

(E) As required by Section 2.08 of the Assessment Ordinance, the City Commission conducted a public hearing on September 12, 2022 in order to receive comments from the owners of the Newly Assessed Parcels prior to adoption of the Assessment Roll for Fiscal Year 2022-23. Mailed notice of such public hearing was provided to the owners of the New Assessed Parcels in

accordance with the Assessment Ordinance. An archive of the mailed notices in on file in the office of the City Clerk.

(F) The Assessments contemplated hereunder are imposed by the City Commission, not the Property Appraiser or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Resolution shall be construed solely as ministerial.

(G) The legislative determinations and findings set forth in the Initial Assessment Resolution are hereby ratified, confirmed and incorporated herein by reference.

SECTION 4. APPROVAL OF ASSESSMENT ROLL; COLLECTION OF ASSESSMENTS.

(A) The estimated Fire Protection Assessed Cost for Fiscal Year 2022-23 is approximately \$1,447,000. The Assessment Roll for Fiscal Year 2022-23, a copy of which is on file with the City Clerk and incorporated herein by reference, is hereby confirmed and approved based upon a Tier 1 rate of \$108.35 per parcel and a Tier 2 rate of \$1.30 per EBU.

(B) The City Financial Services Director is hereby authorized and directed to certify the foregoing Assessment Roll to the Martin County Tax Collector on or before September 15, 2022 for collection pursuant to the Uniform Assessment Collection Act. The Assessment Roll as delivered to the Tax Collector shall be accompanied by a Certificate of Non-Ad Valorem Assessment Roll in substantially the form attached hereto as Appendix A.

(C) Fire Protection Assessments shall constitute a lien upon Assessed Property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims until paid.

(D) The Initial Assessment Resolution approved Maximum Assessment Rates of \$193.87 per Tax Parcel for Tier 1 and \$2.34 per EBU for Tier 2. Such Maximum Assessment Rates are hereby ratified and confirmed as the Maximum Assessment Rates which may be utilized in preparation of the Assessment Roll for Fiscal Year 2022-23 and beyond.

(E) The Initial Assessment Resolution is hereby ratified and confirmed.

SECTION 5. SEVERABILITY. If any clause, section, or other part of this Resolution shall be held by any court of competent jurisdiction unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affects the validity of the other provisions in this Resolution.

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
CAMPBELL RICH, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this ____ day of _____, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

MICHAEL MORTELL

CITY ATTORNEY

APPENDIX A

APPENDIX A

**FORM OF CERTIFICATE
OF NON-AD VALOREM ASSESSMENT ROLL**

I HEREBY CERTIFY that I am the Financial Services Director and authorized agent of the City of Stuart (the "City"), located in Martin County, Florida; as such I have satisfied myself that all property included or includable on the City's non-ad valorem assessment roll for fire protection services and facilities (the "Non-Ad Valorem Assessment Roll") is properly assessed so far as I have been able to ascertain; and that all required extensions on the above described roll to show the non-ad valorem assessments attributable to the property listed therein have been made pursuant to law.

I FURTHER CERTIFY that, in accordance with the Uniform Assessment Collection Act, this certificate and the herein described Non-Ad Valorem Assessment Roll will be delivered to the Martin County Tax Collector by September 15, 2022.

IN WITNESS WHEREOF, I have subscribed this certificate and directed the same to be delivered to the Martin County Tax Collector and made part of the above-described Non-Ad Valorem Assessment Roll this ____ day of September, 2022.

STUART, FLORIDA

By: _____

Financial Services Director

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Louis Boglioli

Title of Item:

THIS ITEM SET FOR TIME CERTAIN OF 5:15 PM - TENTATIVE BUDGET FOR FY 2023 (RC):

RESOLUTION No. 81-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA ADOPTING THE TENTATIVE BUDGETS OF THE CITY OF STUART, FLORIDA, FOR FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Adopts the Tentative Budget for the City of Stuart, Florida for the Fiscal Year 2023

Funding Source:

N/A

Recommended Action:

Adopt Resolution 81-2022

ATTACHMENTS:

1. Resolution_2023_R81-2021_Adopt_Tentative_Budget_for_FY_2023



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION No. 81-2022

**A RESOLUTION OF THE CITY COMMISSION OF THE
CITY OF STUART, FLORIDA ADOPTING THE
TENTATIVE BUDGETS OF THE CITY OF STUART,
FLORIDA, FOR FISCAL YEAR BEGINNING OCTOBER 1,
2022 AND ENDING SEPTEMBER 30, 2023; PROVIDING AN
EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

* * * * *

WHEREAS, it is necessary and proper, and in some instances required by Florida law, to establish the budgetary spending plans (annual budgets) for the various funds of the City of Stuart for the fiscal year beginning October 1, 2022, and ending September 30, 2023, in order to properly reflect anticipated revenues and required appropriations.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE
CITY OF STUART, FLORIDA** that:

SECTION 1: The City of Stuart, Florida hereby adopts the tentative budget, attached hereto, for the fiscal year beginning October 1, 2022 and ending September 30, 2023, as follows:

- (a) There is hereby appropriated from the GENERAL FUND of the City of Stuart for the above described fiscal year, the total sum of Thirty-Eight Million, Nine Hundred Ninety-Six Thousand, Five Hundred Ninety-Six (\$38,996,596) Dollars to provide for the annual budget of the General Fund.
- (b) There is hereby appropriated from the LANDFILL PROPERTY FUND of the City of Stuart for the above described fiscal year the total sum of Forty Thousand, Eight Hundred Sixty-Seven (\$40,867) Dollars to provide for the annual budget of the Landfill Closure Trust Fund.
- (c) There is hereby appropriated from the COMMUNITY REDEVELOPMENT AGENCY of the City of Stuart for the above described fiscal year the total sum of Six Million, Eighty-Seven Thousand, Eighty-Three (\$6,087,083) Dollars to provide for the annual budget of the Community Redevelopment Agency Fund.

RESOLUTION 81-2022
ADOPT TENTATIVE BUDGET for FY 2023

(d) There is hereby appropriated from the LEASED PROPERTY FUND of the City of Stuart for the above described fiscal year the total sum of One Million, Five Hundred Forty-Eight Thousand, Nine Hundred Fifty-Four (\$1,548,954) Dollars to provide for the annual budget of The Property Management Fund.

(e) There is hereby appropriated from the POLICE SPECIAL REVENUES FUND of the City of Stuart for the above described fiscal year the total sum of Fifty-Four Thousand Nine Hundred (\$54,900) Dollars to provide for the annual budget of the Police Special Revenues Fund.

(f) There is hereby appropriated from the WATER AND SEWER FUND of the City of Stuart for the above described fiscal year the total sum of Thirty Million, Two Hundred Thirty-Four Thousand, Two Hundred Thirty-Two (\$30,234,232) Dollars to provide for the annual budget of the Water and Sewer Fund.

(g) There is hereby appropriated from the SANITATION FUND of the City of Stuart for the above described fiscal year the total sum of Six Million, One Hundred Seventy-Seven Thousand, Two Hundred Twenty-Eight (\$6,177,228) Dollars to provide for the annual budget of the Sanitation Fund.

(h) There is hereby appropriated from the STORMWATER FUND of the City of Stuart for the above described fiscal year the total sum of Two Million, Nine Hundred Eighty-Three Thousand, Seven Hundred Thirty-Eight (\$2,983,738) Dollars to provide for the annual budget of the Stormwater Fund.

SECTION 2: This Resolution shall be effective immediately upon adoption.

RESOLUTION 81-2022
ADOPT TENTATIVE BUDGET for FY 2023

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
CAMPBELL RICH, COMMISSIONER

YE S	NO	ABSENT	ABSTAI N

ADOPTED this ____ day of _____, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Bonnie Landry

Title of Item:

SOUTH FLORIDA PAIN MANAGEMENT, LLC CONDITIONAL USE (RC):

RESOLUTION No. 74-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING CONDITIONAL USE APPROVAL TO SOUTH FLORIDA PAIN MANAGEMENT, LLC (TENANT) FOR THE PROPERTY LOCATED AT 715 SE 5TH STREET, CONSISTING OF APPROXIMATELY 0.28 ACRES; TO ALLOW THE USE OF A PAIN MANAGEMENT CLINIC; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Applicant Andrea Zotovas proposes relocating her established pain management clinic office from 900 East Ocean Boulevard to 715 SE 5th Street. Pain management clinics are a conditional use and are subject to regulations in addition to all other standards of the City's Land Development Code. This is not the addition of a Pain Management Clinic. This is simply a business that is already operating in the area which is seeking to relocate.

Funding Source:

Recommended Action:

Staff recommends approval of the Conditional Use for South Florida Pain Management, LCC with conditions.

ATTACHMENTS:

1. A.1 Resolution 74-2022
2. A.2 Resolution 74-2022 'Exhibit D'
3. B. 1 Staff Report
4. B. 2 Staff Review
5. C. Application Z22050004
6. D. Attachments - Back up material
7. E.1 Affidavit & Picture



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION NUMBER 74-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING CONDITIONAL USE APPROVAL TO SOUTH FLORIDA PAIN MANAGEMENT, LLC (TENANT) FOR THE PROPERTY LOCATED AT 715 SE 5TH STREET, CONSISTING OF APPROXIMATELY 0.28 ACRES; TO ALLOW THE USE OF A PAIN MANAGEMENT CLINIC; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, on May 16, 2022, Andrea Zotovas, representing South Florida Pain Management, LLC (tenant), applied for a Conditional Use with the City Development Department to relocate her existing practice to an approximately 0.28- acre property, located at 715 SE 5th Street; and

WHEREAS, on September 12, 2022, the City Commission held a properly noticed hearing at a regularly scheduled City Commission meeting to consider this Conditional Use application; and

WHEREAS, the Owner and Applicant have committed to the City that its development will comply with all development codes, plans, standards, and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon this resolution; and

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the Applicant, Andrea Zotovas, representing South Florida Pain Management, LLC (tenant), is requesting a Conditional Use to relocate her existing Pain Management Clinic from 900 E. Ocean Blvd. to 715 SE 5th Street, and

WHEREAS, the Conditional Use approval shall run with the land; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1:

The foregoing recitals are true and adopted as findings of fact and conclusions of law.

SECTION 2:

The legal description of the property is set forth in **Exhibit ‘A’** attached hereto and made a part hereof by reference. A Map depicting the Property is attached hereto as **Exhibit ‘B’** and made a part hereof by reference. The conditions of development attached hereto as **Exhibit ‘C’** and made a part hereof by reference, and each shall constitute one of the approved documents.

SECTION 3:

The following documents are on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit ‘D’**, hereinafter the ‘Approved Documents’, shall be deemed a part of the development conditions, and shall supplement any earlier approvals:

- a) Physician’s licenses and certifications
- b) South Florida Shared Parking Agreement (14 Pages);
- c) Signage details and justification statements.

SECTION 4:

Except as otherwise provided herein, no development permits, site permits or building permits shall be issued by the City except in compliance with the aforesaid Approved Documents. The failure of the Applicant to comply with the Approved Documents, or with any term or condition of development set forth in this resolution, shall be deemed a zoning violation and no further permits, or other development approvals or orders shall be issued by the City to the owner until the violation has been resolved, and the matter may become the subject of a code enforcement action brought by the City. This section shall not impair the due process or other legal rights of the Developer to seek administrative or judicial redress.

SECTION 5:

Following the adoption and acceptance of this by the Owner, and in addition to any other action for failure to otherwise comply with the Approved Documents, the City Development Director may obtain a hearing before the City Commission and shall thereupon give at least five (5) days written notice of the time, date, and location of the hearing, along with specific notice of the alleged breach. At the hearing before the City Commission the Applicant may appear and may contest the allegation of breach or explain the reason or reasons for the breach. Upon a finding of a material breach of the Approved Documents and therefore, the Resolution(s) adopting the same, the City Commission may impose any or all the following:

- a Initiate the process to amend or repeal this or any other development order pertaining to the development.

- b Impose an administrative penalty of up to \$1,000.00 for each violation, and up to \$5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this resolution by the Applicant shall be considered a zoning violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation found continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 6:

All development orders in conflict with this resolution or any part thereof is hereby repealed to the extent of such conflict. If any provision of this resolution conflicts with any contractual provision between the City and the Property Owner(s) or Applicant(s) of the site, this resolution shall prevail.

SECTION 7:

If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

SECTION 8:

The complete execution and recording of this Resolution by the City Clerk shall occur no later than 90 days from the date of this approval, failing which this resolution shall become void.

SECTION 9:

Upon complete execution of this Resolution, including the Acceptance and Agreement by the Owner, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day of _____, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MERRITT MATHESON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

STATE OF _____

COUNTY OF _____

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE FOREGOING RESOLUTION, AND ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE FOREGOING RESOLUTION. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY, ITS CONDITIONS, AND THE DEVELOPMENT DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS RESOLUTION MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ADMINISTRATIVE ACTIONS AND PENALTIES MAY BE TAKEN AGAINST THE UNDERSIGNED, ITS SUCCESSORS OR ASSIGNS, BY THE CITY, INCLUDING BUT NOT LIMITED TO SANCTIONS DESCRIBED IN THIS RESOLUTION, CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING SUSPENSIONS OR REVOCATIONS, AND ANY OR ALL OTHER APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

APPLICANT: Andrea Zotovas

Print Name: _____

Signature: _____

Print Name: _____

Print Name: _____

PROPERTY OWNER: Journeys End, Inc

Signature: _____

Print Name: _____

OWNERS ACKNOWLEDGMENT

STATE OF FLORIDA,
COUNTY OF _____

The foregoing instrument acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2022, by _____ who ☐ is personally known to me or ☐ has produced _____ as identification.
(Notary Seal)

Signature of Notary Public

Printed Name: _____

Exhibit A – Legal Description

HIGHLANDS 1ST ADD'N, LOTS 1 & 2 BLK 4

Exhibit B
Location Map

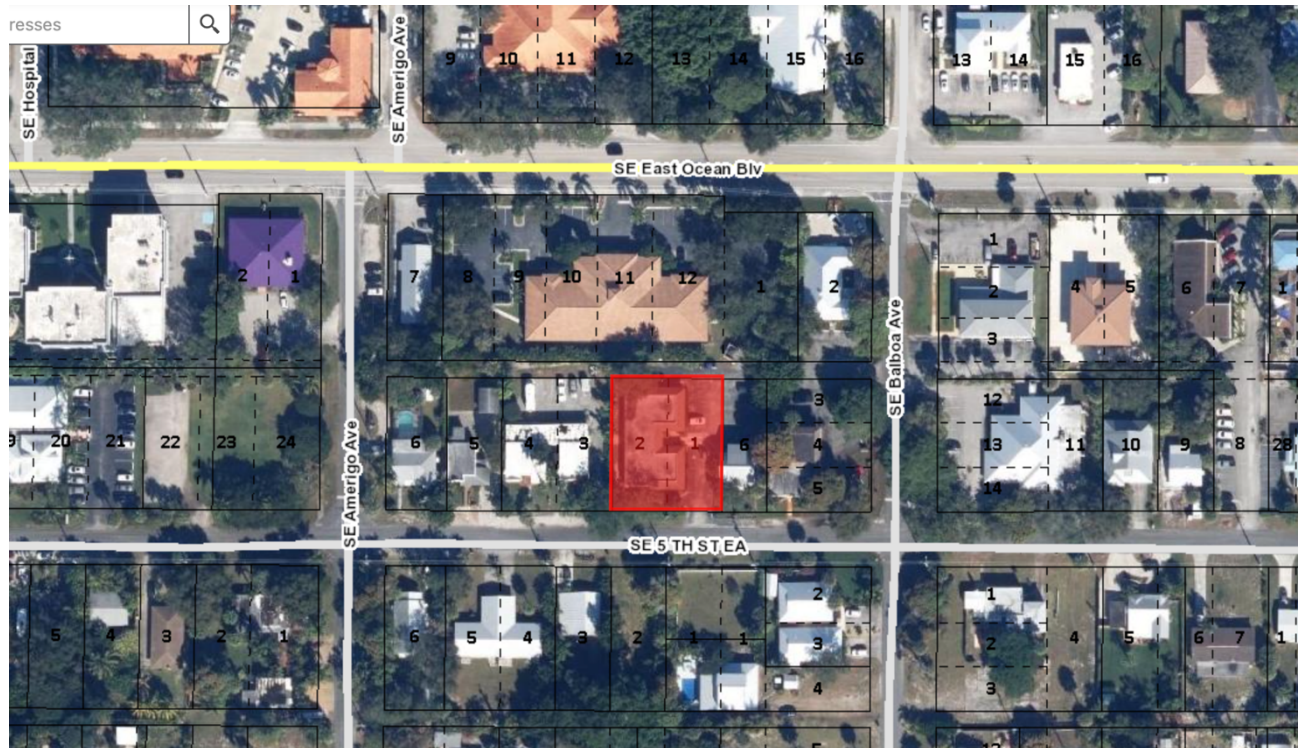


Exhibit C
Conditions of Approval

1. The use of the site will be for a Pain Management Clinic.
2. The following documents and plans are attached to this Conditional Use:
 - a. Physician's licenses and certifications
 - b. South Florida Shared Parking Agreement (14 Pages)
 - c. Signage details and justification statements
3. Business hours shall only be between the hours of 7:00 a.m. and 6:00 p.m.
4. South Florida Pain Management, LLC will enforce strict adherence to client appointment times.
5. Clients will not be permitted to stand, sit, or gather outside of the building in which the clinic operates, on the adjoining sidewalk or in area(s) designed for parking, in such manner as to restrict or interfere with the lawful entry into or out of the clinic or other uses co-located within the building.
6. Clients are prohibited from waiting in their vehicles in the parking spaces designated for the clinic or in parking spaces designated for another co-located use within the building.
7. Building permits will not be issued until building permit applications are deemed sufficient for permit review under City codes and standards, for building improvements has been submitted.
8. Interior build-out construction plans will be subject to compliance with fire codes and standards.

Exhibit D
Approved Documents

American Board of Pain Medicine

Andrea Audra Zotovas, MD

*having successfully met the requirements,
through written examination and other means that
validate qualifications, knowledge, and practice
in pain medicine, has been elected as a*

Diplomate
of the

American Board of Pain Medicine

Certification No. 210718

November 21, 2016
through
December 31, 2026



James P. Jones
President MD

W. J. Johnson
Secretary-Treasurer

American Academy

of

Physical Medicine and Rehabilitation



hereby certifies that

Andreas Zotos, MD, FACP

has been elected a

Fellow

of this Academy

November 12, 1999

John K. Mills, MD
President

John M. Rouns
Secretary

09999659

STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE

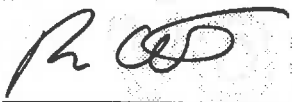
DATE	LICENSE NO.	CONTROL NO.
01/13/2021	ME 81304	740033

THE MEDICAL DOCTOR

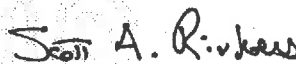
NAMED BELOW HAS MET ALL REQUIREMENTS OF
THE LAWS AND RULES OF THE STATE OF FLORIDA.

Expiration Date: JANUARY 31, 2023

ANDREA AUDRA ZOTOVAS
900 SE OCEAN BOULEVARD
SUITE 227
BUILDING C
STUART, FL - 34994



Ron DeSantis
GOVERNOR



Scott A. Rivkees, MD
State Surgeon General

DISPLAY IF REQUIRED BY LAW

EXPIRATION DATE: JANUARY 31, 2023

Your license number is ME 81304. Please use it in all correspondence with your board/council. Each licensee is solely responsible for notifying the Department in writing of the licensee's current mailing address and practice location address. If you have not received your renewal notice 90 days prior to the expiration date shown on this license, please visit www.FLHealthSource.gov and click "Renew A License" to renew online.

The Medical Quality Assurance Online Services Portal gives you the ability to manage your license to perform address updates, name changes, request duplicate licenses and much more.

It's simple. Log onto your MQA Online Services account today at <http://flhealthsource.gov/>. Select the "Account Login" button to access your account. For changes to your name, address or to request duplicate licenses, choose your selection from the dropdown list under "Manage My License". Your profession will open for renewal 90 days prior to your expiration date. When the renewal cycle opens for your profession, the "Renew My License" header will automatically display on your license Dashboard.

IMPORTANT ANNOUNCEMENTS

ARE YOU RENEWAL READY?

The Department of Health will now review
your continuing education records at the
time of license renewal.

To learn more, please visit
www.FLHealthSource.gov/AYRR

FOUNDATIONS FOR DISCIPLINE

You should be familiar with the Grounds for
Discipline found in Section 456.072(1),
Florida Statutes, and in the practice act for
the profession in which you are licensed.

Florida Statutes can be accessed at
www.leg.state.fl.us/Statutes

0999965

AC#
STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE

DATE	LICENSE NO.	CONTROL NO.
01/13/2021	ME 81304	740033

THE MEDICAL DOCTOR

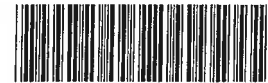
NAMED BELOW HAS MET ALL REQUIREMENTS OF
THE LAWS AND RULES OF THE STATE OF FLORIDA

Expiration Date : JANUARY 31, 2023

ANDREA AUDRA ZOTOVAS



THE MEDICAL DOCTOR



1:3 ZOTOVAS, ANDREA
338/525 900 SE OCEAN BLVD STE 227
SOUTH FLORIDA PAIN MANAGEMENT LLC
STUART, FL 34994-3501



DEA REGISTRATION NUMBER	THIS REGISTRATION EXPIRES	FEE PAID
BZ3973511	05-31-2024	\$888

SCHEDULES	BUSINESS ACTIVITY	ISSUE DATE
2,2N, 3,3N,4,5	PRACTITIONER	04-21-2021

ZOTOVAS, ANDREA
SOUTH FLORIDA PAIN MANAGEMENT, LLC
900 SE OCEAN BLVD STE 227
SOUTH FLORIDA PAIN MANAGEMENT LLC
STUART, FL 34994-3501

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE
UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
WASHINGTON D.C. 20537

Sections 304 and 1008 (21 USC 824 and 958) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance.

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IT IS NOT VALID AFTER THE EXPIRATION DATE.

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE
UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
WASHINGTON D.C. 20537

DEA REGISTRATION NUMBER	THIS REGISTRATION EXPIRES	FEE PAID
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ZOTOVAS, ANDREA
SOUTH FLORIDA PAIN MANAGEMENT, LLC
900 SE OCEAN BLVD STE 227
SOUTH FLORIDA PAIN MANAGEMENT LLC
STUART, FL 34994-3501

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THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IT IS NOT VALID AFTER THE EXPIRATION DATE.

E 3.

Here is the shared parking agreement - For HS SE FIFTH ST
There are 34 available spaces.

964941

DECLARATION

DECLARATION OF COMMON USE, CROSS PARKING, AND ACCESS

THIS DECLARATION is made this 7 day of OCT 1992, by C.D.R. CORPORATION, a Florida corporation (hereinafter referred to as "Declarant").

Declarant is the Owner of property legally described in Exhibit "A" attached hereto, hereinafter referred to as the "Property".

Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions for the benefit of the Owners of the Property.

Declarant hereby declares that all of the Property described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the Property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the Property subject to this Declaration, or any part thereof, their heirs, personal representatives, successors in title and assigns, and this Declaration shall inure to the benefit of each Owner of the Property as described in Exhibit "A".

ARTICLE I - DEFINITIONS

Section 1 - Declarant shall mean and refer to C.D.R., Inc. a Florida corporation.

Section 2 - Owner or Owners shall mean and refer to one or more persons who hold the record title to, or an undivided interest in the record title to, any of the Property described in Exhibit "A".

Section 3 - Person shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 4 - Property or Properties shall mean and refer to the real property described in Exhibit "A" attached hereto including any portion thereof.

Section 5 - Survey shall mean and refer to that certain survey dated 9/1/92 - signature prepared by James E. Neuhaus, Inc., a copy of which is attached hereto as Exhibit "B".

ARTICLE II - COMMON USE

Section 1 - Common Use. The Owners of the Property described in Exhibit "A", including portions thereof, and further including all guests, servants, employees and invitees of such Owners shall

have the right to use in common with others for the purposes set forth below those portions of the Property identified in Exhibit "B" as Paved Areas.

Section 2 - Parking. Three portions of the Property identified in Exhibit "B" as Paved Areas and marked as Parking Spaces may be used by all Owners including their guests, servants, employees and invitees as parking areas for the parking of automotive vehicles and self propelled vehicles such as bicycles. All those using the Paved Areas may only use such in a reasonable manner that does not unreasonably interfere with the rights of all others to use such Paved Areas. The Declarant shall have the ability to designate parking within the paved areas shown on Exhibit "B". Such designation may be made in the deed of conveyance of a portion of the Property to any Owner or may be made by the Declarant in a separate writing recorded in the public records. This ability to designate parking shall terminate at such time as the Declarant has conveyed all of the Property.

Section 3 - Ingress and Egress. The Declarant hereby grants to all Owners and all guests, servants, employees and invitees of Owners a non-exclusive easement over and across those portions of the Property designated in Exhibit "B" as Paved Areas for access to all parking on the Property and for access to and from any portion of the Property to the adjoining public streets, including the alleyway bordering the northerly boundary of the Property.

ARTICLE III - UTILITIES

Declarant hereby grants to all Owners and all guests, servants, employees and invitees of Owners, and all public utility companies, a non-exclusive easement over, through, under and across the Property for the purpose of providing utility services to any improvements located on the Property. Such easement shall be only for existing utility conduits including the right, power and ability to maintain such conduits. Such easement may only be used so as not to unreasonably interfere with any other Owner's use of his portion of the Property.

ARTICLE IV - WELL AND SPRINKLER SYSTEM

Section 1 - Well. The Declarant hereby grants to all owners a non-exclusive easement over, through, under and across the Property for the purpose of access to the existing well located upon the Property as more particularly shown in Exhibit "B" attached hereto. The purpose of this easement is to allow the Owners to draw water from the existing well for the purpose of irrigating the lawn and shrubbery on the Property and for the further purpose of maintaining the existing well for such irrigation purposes.

Section 2 - Irrigation System. The Declarant hereby grants to all Owners and their servants and employees a non-exclusive easement over, through, under and across the Property for the purpose of using and maintaining the existing sprinkler system located upon the Property.

ARTICLE V - MAINTENANCE

Section 1 - Paved Areas. The Paved Areas shown on Exhibit "B" shall be maintained by the Owner of that portion of the Property upon which such Paved Area is located. Provided, however, that in the event any Owner, or any guest, servant, employee or invitee of an Owner damages a Paved Area located upon the property of another Owner, other than through normal wear and tear, the Owner causing such damage, either directly or indirectly through his guest, servant, employee or invitee, shall repair any such damage so caused.

Section 2 - Utilities. The Owner who receives utility service through a particular utility conduit shall be responsible for maintaining such conduit regardless of its location on the Property. Provided, however, that in the event an Owner or his guests, servants, employees or invitees damages a utility conduit, such Owner shall be responsible for repairing such utility conduit.

Section 3 - Irrigation System. The existing sprinkler system located upon the Property shall be maintained by the Owner of that portion of the Property upon which such sprinkler system is located. Provided, however, that in the event an Owner or his guests, servants, employees or invitees damages a portion of the irrigation system, regardless of its location, the Owner causing such damage, either directly or indirectly through his guest, servant, employee or invitee, shall repair any such damage so caused.

Section 4 - Well. The existing well located upon the Property shall be maintained by the Owner of that portion of the Property upon which such well is located. Provided, however, that in the event an Owner or his guests, servants, employees, or invitees damages the well, the Owner causing such damage, either directly or indirectly through his guest, servant, employee, or invitee shall repair any such damage so caused.

Section 5 - Timeliness. All maintenance and all repairs shall be made in a timely manner. In the event an Owner does not maintain a paved area, utility conduit, irrigation system, or well, as set forth above, and as delineated on Exhibit "B" attached hereto, in the same state of repair as such exists today, and in the further event that all of the remaining Owners of the Property give written notice to such Owner, hereinafter delinquent Owner, and such delinquent Owner continues for a period of five (5) days

after receipt of such written notice to fail to maintain such areas, the remaining Owners, in their discretion, may cause such maintenance to be made and the cost thereof shall be borne by the delinquent Owner failing to perform such maintenance after notice as aforesaid. The cost of such maintenance, performed by the remaining Owners, after notice to the delinquent Owner, shall constitute a lien against the Property of the delinquent Owner, which lien may be foreclosed in the same manner as foreclosure of mortgages.

ARTICLE VI - COMPLIANCE AND ENFORCEMENT

Every Owner, including their guests, servants, employees and invitees shall comply with all provisions of this Declaration. The Declarant, or any Owner, shall have the right to bring an action at law or in equity for damages or injunctive relief or for any other remedy available at law or in equity for any breach of this Declaration. Any Owner, by acceptance of a deed, agrees to be bound by this Declaration and all of the rights, duties, obligations and easements created herein.

ARTICLE VII - DECLARANT'S RIGHTS

Any or all of the rights and obligations of the Declarant may be transferred to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein and provided further that no such transfer shall be effective unless it is in a written instrument, signed by the Declarant and duly recorded in the public records of Martin County, Florida. Until such time as all of the Property has been conveyed by the Declarant, the Declarant may amend this Declaration in any manner whatsoever by written instrument executed by the Declarant and recorded in the public records of Martin County, Florida. Any such amendment by the Declarant shall not require the joinder of other Owners, provided, however, that any such Amendment by the Developer may not have a materially adverse effect upon the Property rights of any Owner. Furthermore, no Amendment may be adopted which would effect or impair the priority of any mortgagee or the validity of the mortgage held by such mortgagee, or otherwise adversely effect any such Mortgagee, without the prior written consent of such mortgagee. After all of the Property has been conveyed by the Declarant, this Declaration may only be amended by a written document executed by all of the then Owners of the Property. After the Declarant has conveyed all of the Property to Owners other than the Declarant, the Declarant shall have no liability or responsibility with respect to the Property.

ARTICLE VIII - COVENANT RUNNING WITH THE PROPERTY

All of the terms, conditions, rights, duties, obligations and easements created herein shall be deemed to be covenants running with the Property binding and enforceable against all Owners of the

Property. Any Owner of the Property, by acceptance of a deed, agrees to execute such other and further assurances as may be necessary to maintain, support and defend the terms and conditions set forth herein.

ARTICLE IX - MISCELLANEOUS

Gender. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Successors and Assigns. The terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

Captions. The captions inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

Invalidity. If any clause, provision or portion of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement nor any other clause, phrase, provision or portion hereof to other persons or circumstances, and it is also the intention of the parties to this Agreement that in lieu of each such clause, phrase, provision or portion of this Agreement that is invalid or unenforceable, there be added as a part of this Agreement a clause, phrase, provision or portion as similar in terms as such invalid or unenforceable clause, phrase, provision or portion as may be possible and be valid and enforceable.

Attorneys' Fees. The parties hereto agree that the person awarded the net judgment in any court proceeding for the enforcement, defense or interpretation of any person's rights under this Agreement, whether it be at trial, on appeal or in bankruptcy proceedings, shall be entitled to all court costs and reasonable attorneys' fees from the non-prevailing person.

IN WITNESS WHEREOF, this Declaration has been executed the day and year first above written.

Witnesses:

C.D.K. CORPORATION, a Florida corporation

Susan L. D. Christof
Susan L. D. Christof

BY: *Daniel J. Lundstrom*
DANIEL J. LUNDSTROM,
its President

Printed Name

Sam T. Steyer

Sam T. Steyer
Printed Name

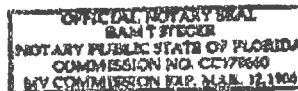
STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 7th day of October, 1992 by DANIEL J. LUNDSTROM, the President of C.D.K. CORPORATION, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced Pa. driver's license as identification and did (did not) take an oath.

Sam T. Steyer
Notary Public
My commission expires:
My commission number:

Sam T. Steyer
Printed Name

Prepared By:
Terence P. McCarthy, Esq.
DeSantis, Cook & McCarthy
2001 E. Ocean Blvd., 2-A
Stuart, Florida 34996



D:\DECLAR.COR (October 2, 1992)

6

OR BXD 9 8 0 PG 1 4 0

EXHIBIT "A"Legal Description of Real Property

PARCEL I: Lots 1 and 2, Block 4, FIRST ADDITION TO THE REVISED PLAT OF HIGHLANDS SUBDIVISION, according to the plat thereof, dated August 9, 1926, recorded in Plat Book 1, Page 18, Martin County, Florida, public records.

PARCEL II: Lot 6, Block 1, STEPMANN PARK, FIRST ADDITION, according to the plat thereof, dated October 6, 1924, recorded in Plat Book 10, page 38, Palm Beach (now Martin) County, Florida, public records.

PARCEL III: Lots 3, 4, and 5, Block 1, STEPMANN PARK, according to the First Addition, and Revised Plat thereof, filed January 16, 1926, recorded in Plat Book 1, page 29, Martin County, Florida, public records.

ORDKO 98 0 PG 1 4 1

CONSENT

The undersigned mortgage holder hereby certifies that it is the holder of a certain mortgage lien or encumbrance on the land subject to the Declaration of Common Use, Cross Parking, and Access ("Declaration"), said Mortgage being recorded in O.R. Book 781, page 334, Martin County, Florida, Public Records, and does consent and subordinate the lien of its Mortgage to the foregoing Declaration.

Dated this 7th day of OCTOBER, 1992.

Signed, sealed and
delivered in the
presence of:

Terrance P. McLaughlin
TERRANCE P. McLAUGHLIN

James E. Neuhaus
JAMES E. NEUHAUS, as Trustee

Thomas R. Baker
Print Name Thomas R. Baker

Address:

Print Name

Dated: 10/7/92

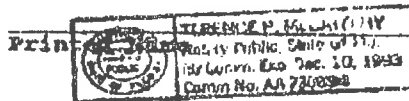
STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 7th day of OCTOBER, 1992 by JAMES E. NEUHAUS, as Trustee. He is personally known to me or has produced as identification and did (did not) take an oath.

Terrance P. McLaughlin
Notary Public

My commission expires:

My commission number:



12 OCT 12 PM 2:46
CLERK OF CIRCUIT COURT
D.C.

OR BKO 980 PGI 143

Description: Martin, FL Document-Book, Page 980.1135 Page: 9 of 9
Order: 300203708 Comment:

TEST 0 141271 OK BK 1511 PG 1971 REC'D 10/16/2000 11:07 AM
MARSHA ELLING MARTIN COUNTY DEPUTY CLERK L Wood

AMENDMENT TO DECLARATION OF COMMON USE,
CROSS PARKING AND ACCESS AGREEMENT

WHEREAS on October 7, 1992 C.D.K. CORPORATION,
Declarant, filed a Declaration of Common Use, Cross Parking
and Access Agreement, as recorded in Official Records Book
980, Page 1135, Martin County, Florida public records,
imposing certain covenants, conditions and restrictions on
the real property attached and described in Exhibit "A"
therein and attached hereto (the "Property"); and

WHEREAS the Declarant provided that all of the
Property had been conveyed by the Declarant, the
Declaration may be amended by a written document executed
by all of the then owners of the Property; and

WHEREAS the owners of the Property described in
Exhibit "A" hereto are desirous of amending the Declaration
of Common Use, Cross Parking and Access Agreement, it is
agreed as follows:

1. Article II, Section 2 - Parking is hereby amended to
delete that section which states "The Declarant shall have
the ability to designate parking within the paved areas
shown on Exhibit "B". Such designation may be made in the
deed of conveyance of a portion of the Property to any
Owner or may be made by the Declarant in a separate writing
recorded in the public records. This ability to designate

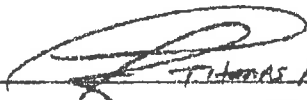
OR BK 1511 PG 1972

parking shall terminate at such time as the Declarant has conveyed all of the Property."

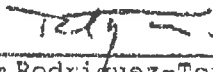
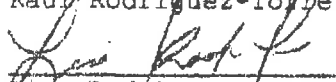
Furthermore, by the execution of this document, all of the property owners hereby acknowledge and expressly state that the Declarant has not "designated" any of the parking as shown on Exhibit "B" of the original Declaration of Common Use, Cross Parking and Access Agreement.

2. All references to the existence and maintenance to the "well" are deleted in their entirety.

IN WITNESS WHEREOF the foregoing was executed this 12 day of OCT., 2000.

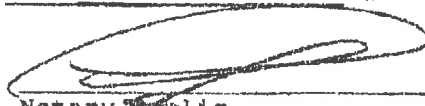

Thomas A. Fort

Lisa Rodriguez-Torres


Raul Rodriguez-Torres

Lisa Rodriguez-Torres

STATE OF FLA.
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 12 day of OCT., 2000, by RAUL RODRIGUEZ-TORRES and ~~LISA RODRIGUEZ-TORRES~~, husband and wife, who are personally known or produced as identification.


Notary Public

Sep-01-00 09:10P The

A. Fogt, Esq.

286+32

P.03

OR BK 01511 PG 1973

[Signature]
Sally Booth

Nicholas A. Vincenzo
 Nicholas A. Vincenzo

STATE OF Florida
 COUNTY OF Martin

The foregoing instrument was acknowledged before me
 this 2nd day of October, 2000, by NICHOLAS A.
 VINCENZO, who is personally known or produced
 as identification.



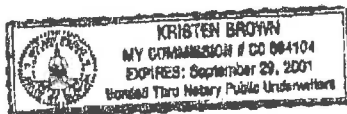
Kristen R. Brown
 Notary Public

[Signature]
DAVID A. HUTCHINSON

James A. Hutchinson, Tr.
Ann R. Hutchinson, Tr.

STATE OF Florida
 COUNTY OF Martin

Roberts The foregoing instrument was acknowledged before me
 this 2nd day of October, 2000, by JAMES A.
 HUTCHINSON, TRUSTEE and ANN R. HUTCHINSON, TRUSTEE, husband
 and wife, who are personally known or produced
 as identification.



Kristen R. Brown
 Notary Public

OR BK 01511 PG 1974

 Nicholas A. Vincenzo

STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me
 this _____ day of _____, 2000, by NICHOLAS A.
 VINCENZO, who is personally known or produced
 _____ as identification.

 Notary Public

 James A. Roberts, Tr.

 Ann R. Hutchinson, Tr.

STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me
 this 6th day of Sept, 2000, by JAMES A. ROBERTS,
 TRUSTEE and ANN R. HUTCHINSON, TRUSTEE, who are personally
 known or produced _____ as identification.

 Notary Public



Arlene Denise Simms
 Commission # CC 992098
 Expires May 18, 2004
 Bonded Through
 Atlanta Bonding Co., Inc.

08 BK 07311 PG 1973

EXHIBIT "A"
Legal Description of Real Property

PARCEL I: Lots 1 and 2, Block 4, FIRST ADDITION TO THE REVISED PLAT OF HIGHLANDS SUBDIVISION, according to the Plat thereof, dated August 9, 1926, recorded in Plat Book 1, Page 18, Martin County, Florida, public records.

PARCEL II: Lot 7, Block 1, STYPMANN PARK, FIRST ADDITION, according to the plat thereof, dated October 6, 1924, recorded in Plat Book 10, Page 56, Palm Beach (now Martin) County, Florida, public records.

PARCEL III: Lots 3, 4 and 5, Block 1, STYPMANN PARK, according to the First Addition, and Revised Plat thereof, filed January 16, 1926, recorded in Plat Book 1, Page 29, Martin County, Florida, public records.

⑤ ① our sign will say:

South Florida Pain Management, LLC
Andrea Zotovas MD

Thats exactly what we have now at
900 SE Ocean Blvd - Suite 227

- ⑥
1. no other pain management is w/in 300 feet
 2. no pharmacy in the building
 3. Park pharmacy is closest. more than 200 feet away.

CITY OF STUART, FLORIDA
CITY COMMISSION
STAFF REPORT

MEETING DATE: September 12, 2022

PREPARED BY: Bonnie C. Landry, AICP, Planning Consultant

TITLE OF ITEM: **RESOLUTION NUMBER 74-2022: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING CONDITIONAL USE APPROVAL TO SOUTH FLORIDA PAIN MANAGEMENT CLINIC, LLC (TENANT) FOR THE PROPERTY LOCATED AT 715 SE 5TH STREET, CONSISTING OF APPROXIMATELY 0.28 ACRES; TO ALLOW THE USE AS A PAIN MANAGEMENT CLINIC; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR A TIMETABLE OF DEVELOPMENT; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.**

SUMMARY EXPLANATION/BACKGROUND INFORMATION:

On June 20, 2022, South Florida Pain Management, LLC, an established business in Stuart, applied for a Conditional Use to relocate the pain management practice from 900 East Ocean Boulevard to 715 SE 5th Street on an approximately .28-acre parcel of land. The applicant states that the office needs to relocate because the unit is being sold.

The subject parcel is in the R-3 Multifamily/Office zoning district and has a Future Land Use Designation of Office-Residential. The subject property is located at 715 SE 7th Street and is within the jurisdictional boundaries of the City of Stuart. Pain Management Clinics are subject to *Sec. 2.06.00 – Supplemental Use Standards* which are considered to have unique characteristics requiring development standards beyond and addition to the other standards of the City's Land Development Code, unless specifically exempted.

Pursuant to *Section Sec. 2.06.14 – Pain Management Clinics* of the City's Land Development Code (LDC), this applicant is subject to the standards as set forth in this code and as well as all other standards of the City of Stuart LDC.

The subject site is a fully developed property with a vacant building with existing parking as well as a shared parking. The building is surrounded by professional and medical offices.

The application included documentation of compliance with the required licenses and certifications, the proposed signage, distance requirements and other regulations regarding operations.

The application was also reviewed against consideration criteria as further described in **Section 11.01.11 G. 5. a-j & 6. a-h**

- a. The proposed use is not contrary to the established land uses in the immediate area.
 - The proposed pain management clinic is a medical use and is consistent with the variety of small-scale, office and medical uses in the area.
- b. The proposed use would not significantly depart for the densities or intensities of use in the surrounding area and thereby increase or overtax the load on public facilities such as schools, utilities, and streets and other public infrastructure.
 - The proposed use will be located in an existing single-story commercial office building. As there is no building expansion proposed and the use is consistent with the surrounding area, there is no significant departure from the densities or intensities, nor will the use overtax public facilities or infrastructure.
- c. The proposed use will not be contrary to the future land use designation and will not have an adverse effect on the goals, policies, and objectives of the Comprehensive Plan.
 - The proposed use does not contravene the future land use designation as the building is existing in a well-developed, mixed-use part of the City. The proposed use will not affect adopted levels of service and all public facilities are available.
- d. The exiting district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.
 - No boundary change is proposed.
- e. The proposed use will not create or excessively increase traffic congestion or otherwise affect public safety.
 - The proposed use will have only a single doctor and small staff. This will limit capacity and traffic to the clinic. Public safety will be insured based upon strict compliance with State (FS and FAC 64B8-9.0131, 64B15-14.005 and 14.009) and local regulations (City of Stuart Code Section 2.06.14) governing pain management clinics. Failure to adhere to the regulations can result in revocation of the conditional use permit and the permittee's license to practice.
- f. The proposed use will not create drainage or a storm water quality problem.
 - No exterior changes or modifications are being proposed so there will be no impact to the existing drainage or stormwater system.
- g. The proposed use will not significantly reduce light or air to adjacent areas.
 - No exterior changes or modifications are being proposed so there will be no impact to existing light or air on adjacent areas.
- h. The proposed use is less burdensome on neighboring properties and on public infrastructure than uses permitted by right in the district.
 - The proposed use will replace a physical therapy clinic and the modest nature of the pain management practice should prove to be no more burdensome on the neighborhood and will have no added impact on public infrastructure.

- i. The proposed use is not out of scale with the uses permitted by right in the district and with the existing uses in the neighborhood.
 - The proposed use is proposed for an existing building that previously contained a physical therapy practice. As such, the use is in scale and consistent with the uses permitted by right in the district.
- j. There are no other adequate sites for the proposed use in districts in which the use is permitted by right within the city.
 - Per section 2.06.14B.2, A pain management clinic, as defined herein, shall be permitted only as a conditional use.

In applying the above standards, the decision-maker will consider each of the following factors:

- a. Ingress and egress to the property and the proposed structures to be located thereon, if any, including considerations of automotive and pedestrian safety and convenience, of traffic flow and control, and of access in case of fire or catastrophe.
 - Ingress and egress will remain unchanged and therefore no changes to access, flow, pedestrian safety, or access in case of an emergency.
- b. Off-street parking and loading areas including consideration of the economic impact thereof on adjacent properties and of any noise and glare created by the location of off-street parking and loading areas on adjacent and nearby properties.
 - Again, there will be no changes to the site and thus no additional impacts to adjacent properties.
- c. Refuse and service areas including consideration of the economic impact thereof on adjacent properties and of any noise and odor created by the location of refuse and service areas on adjacent and nearby properties.
 - The access to the service already provided will remain unchanged. Medical waste, if any, must be treated and handled in accordance with state and federal law.
- d. Utilities including consideration of hook-up locations and availability and compatibility of utilities for the proposed uses.
 - Utilities are existing and no expansion or demand is anticipated.
- e. Screening and buffering including consideration of the type, dimensions, and character thereof to preserve and improve compatibility and harmony among the proposed uses and structures specially permitted and the uses and structures of adjacent and nearby properties.
 - Screening and buffering are existing, and no changes are anticipated.
- f. Signage and exterior lighting including consideration of glare, traffic safety, and economic effects thereof on adjacent and nearby properties.
 - Signage proposed is simply the name of the business and the physicians name which mirrors the signage at the current Stuart location. No change to exterior lighting is proposed.
- g. Required yards and open spaces.
 - No changes are being made to existing yards or open space.
- h. Height of proposed structures including consideration of the effects thereof on adjacent and nearby properties.
 - No exterior changes are being proposed and therefore no change to existing conditions.

COMPLIANCE WITH SEC. 2.06.14. – Pain Management Requirements and the consideration criteria for Conditional Use Permits as described in Section 11.01.11 G. 5. a-j & 6. a-h.

City staff has reviewed this Application and has determined that the subject Application has proved to be in substantial compliance with the Requirements set forth in Sections 2.06.14 and 11.01.11 of the City's Land Development Code. The Applicant has demonstrated that there will be no negative impacts from the proposed Conditional Use on the subject property. Furthermore, City staff recommends approval of this request, with conditions, based upon the business operations provided in the application which were implemented to address potential offsite impacts.

Staff Analysis: The Applicant has worked directly with staff to address the potential of offsite impacts, specifically those related to this conditional use of pain management clinic. The application and project narrative demonstrated their operational procedures comply with the Supplemental Use Standards in Sec. 2.06. The applicant provided evidence of available parking for clients and has stated that appointment times will be strictly enforced to avoid the risk of loitering by clients waiting for their appointments. As a condition of approval, the conditional use permit will limit business operation to the hours between 7:00 a.m. and 6:00 p.m. as well as conditions that ensure compliance with standards to avoid loitering by clients.

RECOMMENDATION:

Approve a Conditional Use to allow South Florida Pain Management, LLC with conditions set forth in Resolution 74-2022.

SEE ATTACHED DOCUMENTS

- Resolution No. 74-2022 with Exhibits



Staff Review

July 28, 2022

A. Application

South Florida Pain Management Clinic Conditional Use Application Number: Z22050004

Applicant	Andrea Zotovas, South Florida Pain Management Clinic
Property Owner	Journeys End, Inc.
Agent for Applicant	N/A
Project Manager	Bonnie Landry, AICP, Planning Consultant
Date of Report	July 28 th , 2022

C. Project Description

The intent of this application is to request approval of a Pain Management Clinic at 751 SE 5th Street.

Address	751 SE 5 th Street
Parcel Number(s)	043841005004000101
Existing Zoning	Multi-Family Office (R-3)
Future Land Use	Office Residential (OFF-RES)
Site Area (acres)	0.28 Acres
Present Use	Office
Subject Property Land Use	Office
Proposed Land Use Designation	N/A
Proposed Zoning District	N/A
Proposed Use	Pain Management Clinic

City Approvals	N/A
Staff Recommendation (if final report) Staff recommends approval of this conditional use with conditions noted in the resolution.	N/A

Sec. 2.06.14. - Pain management clinics.

A. *Definitions.* The following terms, as used in this Code, "approved pain specialist," "pain management clinic or clinic," and "pharmacy" are found in chapter XII, Definitions, of this Code.

B. *General requirements; conditional use.*

1. Each pain management clinic shall at all times, be in compliance with each and every provision of this section, as well as all applicable federal laws, state laws, administrative rules, and city codes. It is the intention of this section to insure compliance with all provisions of Laws of Fla. ch. 2010-211, as incorporated in the Florida Statutes, and F.A.C. 64B8-9.0131 (medical doctors) or F.A.C. 64B15-14.005 and F.A.C. 64B15-14.009 (osteopathic physicians), all as amended from time to time, and to provide additional city regulations not covered or regulated thereby; and

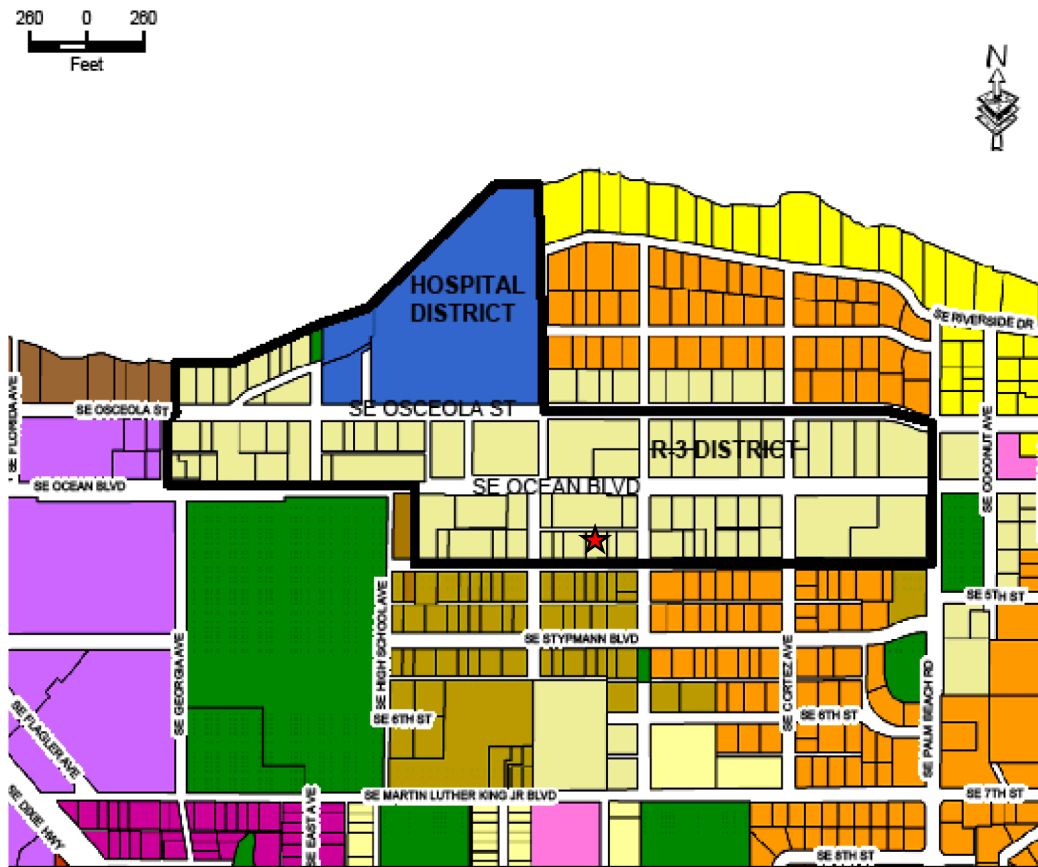
2. A pain management clinic, as defined herein, shall be permitted only as a conditional use, as provided in [section 11.01.10](#), Stuart Land Development Code (LDC), and must be operated by an approved pain specialist, or as a Florida Agency for Health Care Administration (ACHA) licensed operation, under F.S. ch. 400, part X, and as otherwise required by Florida law; and

STAFF COMMENT: Complies. Applicant provided proof of license.

3. In the event the owner or operator of a state licensed, or designated pain management clinic has such license or designation revoked by the Florida Board of Medicine, the Florida Board of Osteopathic Medicine or by ACHA, any conditional use approval granted hereunder shall simultaneously be revoked and shall thereafter be null and void.

C. *Location.* On or after September 13, 2010, any new pain management clinics shall only be located in the following zoning districts, subject to the other requirements of this section:

1. In the "H" Hospital zoning district, and in those portions of the "R-3" (multi-family) residential zoning district, which allow for professional office use, and which are shown on the boundary map below:



STAFF COMMENT: Complies. Zoning is appropriate with an R-3 zoning district.

2. In the "CPUD" commercial planned unit development districts. Pain management clinics shall only be permitted in CPUD locations where the predominate use within the CPUD is office or professional office. Any existing CPUD shall qualify for a new or expanded pain management clinic use, by obtaining a major PUD amendment, and demonstrating strict compliance with all of criteria contained in this section.

3. Pain management clinics, regardless of location, which exist on September 13, 2010, shall be deemed a lawful use, and not subject to the provisions of [section 8.03.00](#), LDC, regarding non-conforming uses.

D. *Distance requirements.* The following distances shall be measured by straight line measurement without regard to intervening buildings from the nearest point of the building or unit within a building in which the proposed clinic is to be located to the nearest point of the lot, use, right-of-way line or district from which the proposed clinic is to be separated.

1. No pain management clinic shall commence operation within 300 feet of any other pain management clinic.

STAFF COMMENT: Complies. Search of Property Appraiser records for uses within 300 feet show no other pain management clinic.

2. No pain management clinic shall be co-located in the same office or building with a pharmacy unless such pharmacy shall have pre-dated the pain management clinic by at least one year.

STAFF COMMENT: Complies. No other pain management clinic is found in this building nor is there a pharmacy in this building.

3. No pain management clinic shall commence operation within 200 feet of a pharmacy, unless such pharmacy shall have pre-dated the pain management clinic by at least one year.

STAFF COMMENT: Complies. Search of Property Appraiser records for uses within 200 feet show one pharmacy; however, this pharmacy has been established for more than one year.

4. Regardless of the other provisions of subsection C, above, no pain management clinic shall commence operation within 250 feet from the nearest right-of-way line of State Road 5, commonly known as "U.S. Highway 1" as laid out and in use on July 26, 1995. This requirement shall also include that portion of State Road 5 consisting of the Roosevelt Bridge and the approaches thereto.

STAFF COMMENT: Complies. This site is more than 250 feet from the nearest right of way line of State Road 5, U.S. Highway 1.

E. Other regulations.

1. It shall be unlawful for any clinic to be open for operation between the hours of 6:00 p.m. and 7:00 a.m.

STAFF COMMENT: Please provide hours of operation. Condition of approval will be that this business is not open before 7:00 a.m. or after 6 p.m.

2. It shall be unlawful for a clinic owner or operator to direct or encourage any patient or business invitee to stand, sit, or gather outside of the building in which the clinic operates, on the adjoining sidewalk or in the area(s) designated for parking, in such manner as to restrict or interfere with the lawful entry into or out of such clinic or other uses co-located within a building. This prohibition includes sitting in or on a vehicle. The clinic owner(s) and operator(s) shall be responsible to actively monitor and apply this regulation. Clinics shall provide sufficient inside seating to insure and provide adequate seating for all patients or business invitees, and those who accompany such persons.

STAFF COMMENT: Application states that patients must adhere to their appointment times. Condition of approval will be that clients are prohibited from waiting in their vehicles or at another co-located use within the building.

3. The number of parking spaces required for pain management clinics shall be the same as for those required of medical offices, but may be subject to a parking analysis study as provided in [section 6.01.17](#), LDC, when the development director has reasonable doubt as to the safety, sufficiency or configuration of available vehicle parking.

STAFF COMMENT: Complies. Required parking is at least 8 spaces (1 space per 200 fee of office space). This building has a shared parking agreement and access to a total of 34 parking spaces.

F. Signage.

1. Approved signage for a pain management clinic shall not include any word(s) or phrase(s) which offers or suggests goods, drugs, prescriptions or services in violation of any applicable state law or which otherwise violates state law, including without limitation, the provisions of F.S. § 456.037 (active license required), F.S. § 456.057 (patient records requirements), F.S. § 458.3265 (pain management clinic registration - MD), F.S. § 458.327 (medical practice violations and penalties), F.S. § 458.331 (medical disciplinary actions), F.S. § 459.0137 (pain management clinic registration - DO), F.S. § 459.013 (osteopathic practice violations and penalties), F.S. § 459.015 (osteopath disciplinary actions), F.S. § 465.0276 (dispensing practitioners) or F.S. § 893.055 (drug monitoring program), as currently written or amended.

2. Signage for a pain management clinic shall not contain any word or phrase that uses the word "pain," unless the clinic is operated by an approved pain specialist or as an AHCA licensed operation (F.S. ch. 400, part X). No off-premises signage, including billboards wherever located, shall be permitted for the advertisement of pain management clinics.

STAFF COMMENT: Complies. Applicant states that sign will read exactly as the prior Stuart location sign, namely "South Florida Pain Management, LLC. Andrea Zotovas, M.D." Applicant is licensed as a Diplomate of the American Board of Pain Medicine.

3. Signage for a pain management clinic must contain the correct name of the physician or physicians designated by the clinic pursuant to F.S. § 458.3265(1), as amended from time to time, and such signage shall be kept current at all times with the correct name of the practice, the correct name of the physician(s) designated, and other relevant information.

STAFF COMMENT: Complies. Applicant states that sign will read exactly as the prior Stuart location sign, namely "South Florida Pain Management, LLC. Andrea Zotovas, M.D."

4. Nothing contained in this section shall be interpreted to restrict the use of the word "pain" in advertising by Florida licensed chiropractors, physical therapists, nurse practitioners, naturapaths, acupuncturists, massage therapists, dentists, oral surgeons, or similar treating or dispensing professionals not licensed under F.S. ch. 458 or 459.

G. *Landlord responsibilities.* Owners or landlords who lease space to a pain management clinic must expressly incorporate the provisions of this [section 2.06.16](#) into their lease(s) with the clinic. Any such lease, whether oral or written, must provide that a violation of any federal or state law or municipal ordinance regulating or affecting pain management clinics shall be a material breach of the lease and shall constitute grounds for termination and eviction by the owner or landlord.

STAFF COMMENT: Complies. This language is provided in Section 5 of the lease agreement.

Pain Management Clinic – Responses to CUP consideration criteria

Section 11.01.11 G. 5. a-j & 6. a-h

5. The factors that the city commission or community redevelopment board shall consider when making its determination are as follows:

- a. The proposed use is not contrary to the established land uses in the immediate area.
 - The proposed pain management clinic is a medical use and is consistent with the variety of small-scale, office and medical uses in the area.
- b. The proposed use would not significantly depart for the densities or intensities of use in the surrounding area and thereby increase or overtax the load on public facilities such as schools, utilities, and streets and other public infrastructure.
 - The proposed use will be located in an existing single-story commercial office building. As there is no building expansion proposed and the use is consistent with the surrounding area, there is no significant departure from the densities or intensities, nor will the use overtax public facilities or infrastructure.
- c. The proposed use will not be contrary to the future land use designation and will not have an adverse effect on the goals, policies and objectives of the Comprehensive Plan.
 - The proposed use does not contravene the future land use designation as the building is existing in a well-developed, mixed-use part of the City. The proposed use will not affect adopted levels of service and all public facilities are available.
- d. The exiting district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.
 - No boundary change is proposed.
- e. The proposed use will not create or excessively increase traffic congestion or otherwise affect public safety.
 - The proposed use will have only a single doctor and small staff. This will limit capacity and traffic to the clinic. Public safety will be insured based upon strict compliance with State (FS and FAC 64B8-9.0131, 64B15-14.005 and 14.009) and local regulations (City of Stuart Code Section 2.06.14) governing pain management clinics. Failure to adhere to the regulations can result in revocation of the conditional use permit and the permittee's license to practice.
- f. The proposed use will not create drainage or a storm water quality problem.
 - No exterior changes or modifications are being proposed so there will be no impact to the existing drainage or stormwater system.
- g. The proposed use will not significantly reduce light or air to adjacent areas.
 - No exterior changes or modifications are being proposed so there will be no impact to existing light or air on adjacent areas.

- h. The proposed use is less burdensome on neighboring properties and on public infrastructure than uses permitted by right in the district.
 - The proposed use will replace a physical therapy clinic and the modest nature of the pain management practice should prove to be no more burdensome on the neighborhood and will have no added impact on public infrastructure.
- i. The proposed use is not out of scale with the uses permitted by right in the district and with the existing uses in the neighborhood.
 - The proposed use is proposed for an existing building that previously contained a physical therapy practice. As such, the use is in scale and consistent with the uses permitted by right in the district.
- j. There are no other adequate sites for the proposed use in districts in which the use is permitted by right within the city.
 - Per section 2.06.14B.2, A pain management clinic, as defined herein, shall be permitted only as a conditional use.

6. In applying the above standards, the decision-maker will consider each of the following factors:

- Ingress and egress to the property and the proposed structures to be located thereon, if any, including considerations of automotive and pedestrian safety and convenience, of traffic flow and control, and of access in case of fire or catastrophe.
 - Ingress and egress will remain unchanged and therefore no changes to access, flow, pedestrian safety or access in case of an emergency.
- Off-street parking and loading areas including consideration of the economic impact thereof on adjacent properties and of any noise and glare created by the location of off-street parking and loading areas on adjacent and nearby properties.
 - Again, there will be no changes to the site and thus no additional impacts to adjacent properties.
- Refuse and service areas including consideration of the economic impact thereof on adjacent properties and of any noise and odor created by the location of refuse and service areas on adjacent and nearby properties.
 - The access to the service already provided will remain unchanged. Medical waste, if any, must be treated and handled in accordance with state and federal law.
- Utilities including consideration of hook-up locations and availability and compatibility of utilities for the proposed uses.
 - Utilities are existing and no expansion or demand is anticipated.
- Screening and buffering including consideration of the type, dimensions, and character thereof to preserve and improve compatibility and harmony among the proposed uses and structures specially permitted and the uses and structures of adjacent and nearby properties.
 - Screening and buffering are existing, and no changes are anticipated.
- Signage and exterior lighting including consideration of glare, traffic safety, and economic effects thereof on adjacent and nearby properties.
 - Signage proposed is simply the name of the business and the physicians name which mirrors the signage at the current Stuart location. No change to exterior lighting is proposed.
- Required yards and open spaces.
 - No changes are being made to existing yards or open space.

- Height of proposed structures including consideration of the effects thereof on adjacent and nearby properties.
 - No exterior changes are being proposed and therefore no change to existing conditions.



City of Stuart
121 SW Flagler Ave.
Stuart, FL 34994
development@ci.stuart.fl.us
(772) 288-5326

Received by: 
Reviewed by: 
Approved by: _____

RECEIVED

Application for Conditional Use Permit

Project ID# 222050004
(Staff Entry)

DEVELOPMENT
Received By: 

Pre-App Conference Date:	Application Date:
--------------------------	-------------------

SITE INFORMATION

Project Name: <u>South Florida Pain Management, LLC</u>	Parcel ID#: <u>043841005004000101</u>
Site Address: <u>715 SE 5th ST. STUART, FL 34994</u>	
Subdivision: _____	Lot(s): _____
Site Acreage: <u>0.28 ac</u>	Flood Zone/Base Flood Elevation:
Current Zoning District / CRA Subdistrict (if applicable): <u>R-3</u>	
Current Comprehensive Plan Future Land Use Designation:	
Existing Land Use: <u>MEDICAL OFFICE</u>	Proposed Land Use: <u>MEDICAL OFFICE</u>
Proposed Square Footage (if applicable): <u>1631</u>	Proposed Density (if applicable): <u>N/A</u>

PETITIONER INFORMATION

Property Owner: <u>JOURNEYS END, INC.</u>	Phone Number / Email Address:
Property Owner's Mailing Address: <u>717 SE 5th ST STUART FL 34994</u>	
Applicant (if not Owner): <u>ANDREA ZOTOVAS</u>	Phone Number / Email Address: <u>561 319 3208</u>
Applicant's Mailing Address: <u>400 STARLIGHT LANE JUNO BEACH FL 33408</u>	
Agent/Contact Person: <u>Applicant</u>	Phone Number / Email Address: <u>↓</u>
Agent's Mailing Address: <u>South Florida Pain Management</u>	
Architect:	Engineer: <u>@gmail.com</u>
Planner:	Landscape Architect:

Financial Responsibility Form

(Please Print or Type)

The Undersigned, as the Property Owner, Lessee, Contract Purchaser, or Applicant (circle one), acknowledges responsibility for all City expenses associated with the referenced application (s) including time spent by the City's consultants and further acknowledges that payment of consultant fees will be made prior to the receipt of the consultant comments.

Name:	ANDREA ZOTOVAS
Title:	Lessee / Practice owner
Company:	South Florida Pain Management, LLC
Company Address:	900 SE Ocean Blvd S-227

City/State/Zip Code:	STUART FLORIDA 34994
Telephone Number:	772 221 9113
Facsimile Number:	772 221 9115
Email Address (optional):	SouthFloridaPainManagement@gmail.com

I hereby certify that all information contained herein is true and correct.

1. Signed this 16 day of may, 2022.



Signature of Property Owner, Lessee, Contract Purchaser of Applicant (circle one)

Statement of Ownership and Designation of Authorized Agent

(Please Print or Type)

Before me, the undersigned authority, personally appeared Sonia M. Pawluc

Who, being by me first duly sworn, on oath deposed and says:

1. That he/she is the fee simple title owner of the property described in the attached Legal Description.
2. That he/she is requesting approval of a Conditional Use Permit in the City of Stuart, FL.
3. That he/she has appointed Andrea Zotovas to act as an authorized agent on his/her behalf to accomplish the above project.

Name of Owner: Journey's End, Inc.

Sonia M. Pawluc
Signature of Owner:
717 SE 5th Street
Street Address

Sonia M. Pawluc, Pres.
By: Name/Title
Stuart FL 34994
City, State, Zip Code

P.O. Box
772.463.2600
Telephone Number

City, State, Zip Code
772.463.2626
Fax Number

spawluc@soniampawluc.com
Email Address:

STATE OF FLORIDA, COUNTY OF MARTIN

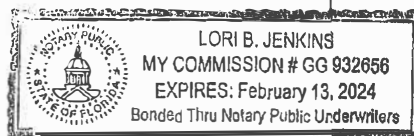
Sworn and subscribed before me by means of ☒ physical presence or ☐ online notarization, this

11th day of MAY, 2022 By SONIA M PAWLUC

Personally Known OR Produced Identification
Type of Identification Produced:

[Signature]
Notary Public

My Commission expires:



Application Requirements

Fee: \$1,598.00 – Conditional Use Permit *(this does not include fees that may be charged as a result of application reviews by the City's consultants or any required recording fees.)*

Submittal Requirements: A completed application form, the payment of fees, one (1) copy of all documents on a PDF formatted disc electronically signed and sealed, and a site plan. (Note: A concept plan may, at the discretion of the applicant, be submitted instead of a site plan. However, in doing so the applicant acknowledges that a site plan will need to be submitted for City Commission approval prior to making application for a development permit). The data requirements for a site plan and a concept plan are available at the Development Department.

Note: An application for a Conditional Use Permit may not be filed if the City Commission has denied an application for a Conditional Use Permit for the subject property within the previous two years.

The applicant has the burden of proof to demonstrate to the City Commission that the following standards are met:

1. The proposed use is not contrary to the established land uses in the immediate area;
2. The proposed use would not significantly depart from the densities or intensities of use in the surrounding area and thereby increase or overtax the load on public facilities such as schools, utilities, and streets and other public infrastructure.
3. The proposed use will not be contrary to the proposed land use plan and will not have an adverse effect on the goals, policies and objectives of the Comprehensive Plan;
4. The existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change;
5. The proposed use will not create or excessively increase traffic congestion or otherwise affect Public Safety;
6. The proposed use will not create drainage or a storm water quality problem;
7. The proposed use will not significantly reduce light or air to adjacent areas;
8. The proposed use is less burdensome on neighboring properties and on public infrastructure than uses permitted by right in the district;
9. The proposed use is not out of scale with the uses permitted by right in the district and with the existing uses in the neighborhood; and
10. There are no other adequate sites for the proposed use in districts in which the proposed use is permitted by right within the City.

Approving Authority: The Development Director is required to prepare a staff report and recommendation concerning this application for the City Commission public hearing.

Justification: Please provide justification supporting the request for a Conditional Use Permit *(include additional pages if needed)*:

Please see attached.

(over)

Application for Conditional Use Permit Page 1

I am moving my current pain management practice location from 900 SE Ocean Blvd Suite 227 Stuart FL 349994 to 715 SE Fifth St Stuart FL 34994 because the owner sold the unit and the new owner will be using it for his own medical practice. I believe he is an endocrinologist.

I have been practicing in Stuart at the 900 SE Ocean Blvd Suite 227 location since 2013.

I am a solo practitioner, and work with one other person who is responsible for all front desk tasks such as reception, scheduling, and phones.

Our patients are held to a strict schedule for appointments. Because of that, we do not have more than 2-3 patients in the office at any given time.

We will not cause an undue burden on the area.

There is ample parking at 715 SE Fifth St to meet the requirements of a medical practice.

The previous tenants who occupied the unit had a Physical Therapy practice which also had those requirements.

In addition to the immediate parking lot of the building, there is shared parking available among the neighboring businesses.

This location is within the boundaries of the correct district for my intended use, - of what I have heard referred to as the "Medical Corridor " in Stuart, which is the R-3 designation and is not contrary to the established land uses in the area.

We will not significantly depart from the densities or intensities of use in the surrounding area. We will not overtax the load on any public facilities.

We are not contrary to the proposed land use plan and will not have an adverse effect on the goals, policies and objectives of the Comprehensive Plan.

We will not create or excessively increase traffic congestion or otherwise affect public safety.

We are very respectful of neighboring businesses and insist that patients adhere to their scheduled appointment times. There will be no loitering.

We will have no effect on drainage or cause a storm water quality problem, and will not reduce light or air to adjacent areas.

We will cause no increased burden on neighboring properties or public infrastructure, will not be out of scale with permitted uses, and are compatible with existing uses in the neighborhood.

We are within the correct area for our proposed use in the City. That is the R-3 area.

My name is Dr. Andrea Zotovas. I am Board Certified in Physical Medicine and Rehabilitation and Pain Medicine.

My training and expertise is in the treatment and physical rehabilitation of injuries, or functional loss, from a wide variety of causes. They may be neurologic such as a spinal cord injury or stroke or orthopedic such as trauma degenerative arthritis cervical or lumbar or thoracic disc herniation's or any other cause of weakness or loss of function.

I am originally from Chicago, I have been in practice since 1997, and have been practicing in Stuart since 2013.

I provide appropriate and responsible pain management services to benefit the community.

I look forward to continuing to care for my patients, providing a referral option to other medical practitioners in the community who do not prescribe controlled substances for the management of pain, and being an asset to the community.

I will briefly describe how my practice works

Initial evaluation and monitoring of patients

We perform extensive screening of all new patients which includes-

Obtaining previous medical records/office notes from previous pain management and other specialty medical treaters, such as orthopedic physicians neurosurgeons neurologists, rheumatologists, primary care doctors that the patient may have seen in the past.

Obtaining results of diagnostic evaluations such as M RRI, CT scan, x-ray reports. Patients must provide diagnostic studies which substantiate their pain complaints, as well as insure that there are no underlying /undiagnosed dangerous medical conditions that are being overlooked. Studies must be recent, within the past three years.

E force print outs. We obtain a prescription history for all controlled substances on each patient at their initial visit and then on every subsequent visit from the Florida prescription database. The prescription drug database monitoring system lists every controlled substance at the patient has been prescribed, the date it was written, the date that it was filled. It lists the prescribing doctor's name and address as well as the name and address of the pharmacy where the medication was filled. By checking this print out at each visit we are assured that patients are not receiving duplicate or additional controlled substances from any other provider. Additionally , patients are advised that they may not receive any prescription medications that fall under the controlled substances category from any provider when they are enrolled in our pain management program.

Patients are advised that doing so is a felony and that they will be immediately discharged and reported to the authorities

Urine drug testing.

Each patient is tested upon their initial visit and randomly upon follow-up visits to ensure compliance with prescribed treatment and absence of any illegal or non prescribed medications or substances.

Referrals.

Based on clinical course, physical examination findings and individual needs, patients may referred for Physical Therapy, surgery or other interventions.

In brief summary

I believe we provide a valuable service to Stuart and the surrounding areas to care for patients with chronic pain conditions; individualized safe and appropriate care which allows patients to work, care for themselves and their families.



Martin County Property Information Lookup

General Information		Property Location Map			
Parcel #	043841005004000101				
Owner Name:	JOURNEYS END INC				
Owner Address:	717 SE 5TH ST STUART, FL 34994				
Site Address:	719 SE 5TH ST STUART, FL 34994				
Storm Surge Evacuation Zone:	N/A				
Flood Zone - BFE:	X - N/A' NAVD				
FIRM Panel:	12085C0153H				
Urban Service District:	Primary				
Municipality:	City of Stuart				
Taxing District:	Municipality				
ISO-PPC Rating:	Contact City of Stuart Fire Rescue				
Subdivision infill applicability:	Yes				
Development Imposed Conditions:	Residential Fire Sprinklers Not Required				
Building Design Wind Speed		Election Information			
Occupancy Category I,II,III/IV:	140, 160, 170	Voter Precinct	7		
		Commission District:	1		
		Commissioner:	Doug Smith	772-288-5400	
		Clerk of Circuit Court:	Carolyn Timmann	772-288-5576	
		County Sheriff:	William Snyder	772-220-7000	
		Property Appraiser:	Jenny Fields	772-288-5608	
		School Superintendent:	John D. Millay, Ph.D.	772-219-1200	
		Supervisor of Elections:	Vicki Davis	772-288-5637	
		Tax Collector:	Ruth Pietruszewski	772-288-5600	
Land Use		Utilities & Solid Waste			
Land Use information can change frequently, please verify with the Martin County Growth Management Department at 772-288-5495		Service:	Utility:	Availability:	Phone:
Zoning:	STUART	Water:	City of Stuart Utilities	Call	772-288-5317
Zoning Details:	N/A	Sewer:	City of Stuart Utilities	Call	772-288-5317
Future Landuse	NO DATA	Recycle Collection:	N/A		
Landuse Details:	N/A	Trash Collection:	N/A		
Community Redevelopment		Yard Waste Collection:			
CRA:	N/A				
CRA Regulating Plan:	N/A				
Schools					
School information obtained from the Martin County School District system, 772-219-1200					
Elementary School:	J D Parker Elementary				
Middle School:	Stuart Middle School				
High School:					
Created: May , 7th, 2022 1:25 PM					

Disclaimer: The Geographic Information System map product, received from Martin County, ("COUNTY") is provided "as is" without warranty of any kind, and the COUNTY expressly disclaims all express and implied warranties, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. The COUNTY does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the information provided to you by the COUNTY in terms of correctness, accuracy, reliability, timeliness or otherwise. The entire risk as to the results and performance of any information obtained from the COUNTY is entirely assumed by the recipient. Please contact the responsible Martin County Department for specific determinations.

Lease

THIS LEASE, made between Journey's End, Inc., its successors and assigns, of 717 S.E. 5th Street, Stuart, FL, herein called Lessor, and South Florida Pain Management LLC, its successors and assigns, of 715 S.E. 5th Street, Stuart, FL, herein called Lessee.

Lessee hereby offers to lease from Lessor the premises situated in the City of Stuart, County of Martin, State of Florida, described as 715 S.E. 5th Street, Stuart, Florida, consisting of approximately 1,631 square feet, upon the following terms and conditions:

1. **Term and Rent.** Lessor demises the above premises for a term of sixty (60) months, commencing May 1, 2022, and terminating on April 30, 2027, or sooner as provided herein.
 - a) The base annual rental for the first twelve (12) months (year one) shall be Twenty-Two Thousand Eight Hundred and Thirty-Four and 00/100 Dollars (\$22,834.00), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the first year of this lease.
 - b) The base annual rental for the second twelve (12) months (year two) shall be Twenty-Three Thousand Five Hundred Nineteen and 02/100 Dollars (\$23,519.02), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the second year of this lease.
 - c) The base annual rental for the third twelve months (year three) year shall be Twenty Four Thousand Two Hundred Twenty-Four and 59/100 Dollars (\$24,224.59), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the third year of this lease.
 - d) The base annual rental for the fourth twelve months (year four) year shall be Twenty Four Thousand Nine Hundred Fifty-One and 33/100 Dollars (\$24,951.33), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the fourth year of this lease.
 - e) The base annual rental for the fifth twelve months (year five) year shall be Twenty Five Thousand Six Hundred Ninety-Nine and 87/100 Dollars (\$25,699.87), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the fifth year of this lease.

The rental payment for each year of such lease and any renewal periods shall include the increase in any property tax and property insurance applicable to such space over and above the billings for 2021. All rental payments shall be made to Lessor, at the address specified above or any subsequent address provided by Lessor in writing.

2. **Use.** Lessee shall use and occupy the premises for a pain management medical office. The premises shall be used for no other purposes; without the prior written consent of Lessor.
3. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at its own expense and at all times, maintain the premises in good and safe condition, including glass, electrical wiring, plumbing and heating installations, and any other system or equipment upon the premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs or replacement required, excepting the roof, exterior walls, structural foundations, and landscaping. Lessor shall maintain those portions adjacent to the premises, such as sidewalks, parking lots, lawns and shrubbery.

4. **Alterations.** Lessee shall not, without first obtaining the prior written consent of Lessor, make any alterations, additions, or improvements in, to or about the premises.
5. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee. A violation of any federal or state law or municipal ordinance regulating or affecting pain management clinics shall be a material breach of this lease and shall constitute grounds for termination of this lease and eviction of the Lessee by the Lessor.
6. **Assignment and Subletting.** Lessee shall not assign this lease nor sublet any portion of the premises without prior written consent of the Lessor. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease. Lessor shall not unreasonably withhold consent to a request by Lessee to sublet.
7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for electricity and telephone service. Water for The Highlands Building is not separately metered for each suite; therefor, Lessor shall advise Lessee of its proportional share for such charges (based on the square footage of the leased space) on a monthly basis, which amount shall be remitted as additional rent. If a future lessee occupies a suite in the Highlands Building and such lessee engages in a business that uses excessive water, that lessee will be responsible for a proportionately larger share of the water bill.
8. **Entry and Inspections.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within N/A days of the commencement of the term hereof
10. **Indemnification of Lessor.** Lessor shall not be liable for any damage or injury to Lessee, or to any person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claims for damages, no matter how caused. Lessee additionally indemnifies Lessor for any expense incurred by Lessor related to any claims made against Lessor by virtue of Lessor's ownership of the premises for any business practice by Lessee including, but not limited to, any alleged violation by Lessee of Federal or State law, or local ordinance.
11. **Insurance.** Lessee, at its expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows: If available, in limits of not less than \$1,000,000.00. Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as an additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies, which may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation, which might otherwise exist.
12. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a

claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

13. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at its option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate the lease.
14. **Lessor's Remedies on Default.** If Lessee defaults in the payment of rent, Lessor may give Lessee notice of such default and if Lessee does not make payment within three (3) days of such notice, Lessor shall be entitled to immediate possession and termination of the lease without further notice. In such event Lessee remains liable for all amounts as provided herein. In the event of a default other than non-payment of rent, Lessor may give Lessee three (3) days' notice of such default and if the default is of such nature that it cannot be completely cured within such period, Lessee must commence such cure within three (3) days from receipt of said notice and thereafter proceed with reasonable diligence and in good faith to cure such default. If Lessee fails to cure any such default within twenty (20) days, Lessor may terminate this lease upon ten (10) days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver. If Lessee fails to deliver possession of the premises as provided herein after termination of this Lease, Lessor shall be entitled to claim double rent for all such hold over periods of time. Lessee agrees to pay the cost of collection and attorneys' fees on any part of rental amounts that may be collected by suit or by attorney, after same is past due.
15. **Security Deposit.** Lessee will deposit with Lessor on the signing of this lease the sum of One Thousand Nine Hundred and Two and 83/100 Dollars (\$1,902.83) as security for the performance of Lessee's obligations hereunder, including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease. Lessee hereby agrees that Lessor shall not be required to pay Lessee interest on said security deposit. Said security deposit may be co-mingled with other funds of Lessor.
16. **Florida Sales Tax.** Lessee shall pay the Florida Sales Tax. The current Florida sales tax is 5.5% with a .05% county surcharge. In the event the sales tax changes, Lessee shall pay the changed amount.
17. **Penalty Payment.** A penalty payment of 5% of the monthly rent will be due if the Lessor has not received the rent by the 5th day of each month.
18. **Occupancy.** Lessee shall have occupancy on May 1, 2022.
19. **"As Is" Lease.** This is an "as is" lease.
20. **Aesthetic Considerations.** In order to maintain the architectural theme and aesthetic beauty of the Building, no sign, lettering, sticker, picture, flyer, or other advertising material shall be

affixed to the interior or exterior of any glass window or door of the premises or be affixed to the Building itself (except for any permits required by law to be displayed on the door, such as alarm permits), or be erected or constructed on any exterior part of the Building or on any part thereof which the premises are located without the prior written approval of the Lessor. In the event that the Lessee violates any of the provisions of this paragraph or fails to obtain the written consent of the Lessor or otherwise erected or maintains any sign or advertising which is not, in the opinion of the Lessor, in general conformity with the architectural theme and aesthetic beauty of the Building, the Lessor may, after giving written notice to the Lessee, remove such sign at Lessee's expense and may, if necessary, enter upon the premises to remove such sign without being deemed guilty of trespass or incurring any liability whatsoever to Lessee. All signs owned by Lessee shall be further subject to the rules and regulations of the appropriate government entity notwithstanding any approvals that Lessor may grant. Upon Lessee's vacating the premises, or the removal or alteration of its sign for any reason, Lessee shall be responsible for the cost for removal of the sign upon termination or expiration of this Lease or at time of removal of said sign, whichever occurs first.

21. **Signage.** The Lessee will have right to signage of equal dignity with the other occupants of the Highlands Building. Signage shall be at Lessee's expense, and Lessor shall have the right to approve signage to assure it is in conformity with the color and style and typeface adopted by Lessor for the Building.
22. **Air Conditioning Units, Maintenance.** The Lessee shall not install any air conditioning units in the windows of the premises. The Lessee shall have the air conditioning system serviced no less frequently than annually, for routine cleaning and maintenance at Lessee's expense. Lessee agrees to change the air conditioning filters quarterly, at its expense. If the air conditioning unit requires replacement, it shall be at Lessor's expense.
23. **Leasing Agents.** Sixty (60) days prior to the expiration of the Lease, the Lessee shall cooperate with the Lessor in permitting leasing agents to enter and show the property.
24. **Attorney's Fees.** In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such collection efforts or legal action, including a reasonable attorney's fee, whether or not a lawsuit is actually filed.
25. **Waiver.** No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.
26. **Notices.** Any notice which either party may or is required to give, shall be given by mailing the same, certified mail, postage prepaid, to Lessee at the premises, or Lessor at the address specified above, or at such other places as may be designated by the parties from time to time.
27. **Heirs, Assigns, Successors.** This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.
28. **Subordination.** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.
29. **Radon Gas Disclosure.** As required by law, Lessor makes the following disclosure: "Radon Gas" 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. Additional information regarding radon and radon testing may be obtained from your county public health unit.
30. **Entire Agreement.** This writing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.
31. **Personal Property.** All personal property placed or moved in the leased premises shall be at the risk of the Lessee or owner thereof, and Lessor shall not be liable for any damage to said personal property, or to the Lessee arising from the bursting or leaking of water or sewer

pipes, or other damage or injury by water, or from any act or negligence of any co-tenant or occupants of the building or of any other person whomsoever. Lessee retains a lien against all such personal property as security for payment of any defaults under the lease.

32. **Payments Received.** The Lessor acknowledges receipt of the following:

First month's rent (May, 2022) payment of \$1,902.83.

First month's (May, 2022) sales tax based on current 5.5% rate plus .05% surcharge of \$114.81

Damage and security deposit of \$1,902.83.

Total amount due upon lease execution: \$3,920.47.

33. **Pets.** No pets shall be permitted on the premises.

34. **Fire Regulations.** Lessee shall comply with all codes regarding fire extinguishers maintenance on the premises.

35. **Trash.** If the Lessee desires trash removal from the premises, it shall use the garbage cans behind the building and shall take such cans out to the street on the designated days for trash pick up. Further, it shall return the garbage cans to the back of the building following that day's trash pick up.

36. **Storm Shutters.** In the event of hurricane or severe storms, Lessee agrees to hang storm shutters provided by Lessor for the windows on the premises' west side.

37. **Parking.** Lessee agrees to first utilize the side north side alley for parking vehicles owned by its personnel in an effort to conserve parking for other tenants and clients. In no event shall Lessee regularly park more than five (5) cars in total between the alley and parking lot presently used by the Building. Lessee shall not park in the single space on the north side of the building currently used by Lessor. Lessee acknowledges that failure to abide by the foregoing restrictions on and arrangements regarding parking will overburden the parking area and shall be a basis for termination of the lease upon sixty (60) days' written notice from Lessor. Additional shared parking is available to be utilized by Lessee.

38. **Venue.** Lessee acknowledges and agrees that Florida law governs this Lease and agrees to be subject to the jurisdiction of the courts in and for Martin County, Florida, and agrees to said venue.

39. **Severability.** Lessee acknowledges and agrees that to the extent that any clause in this lease is deemed to be void or voidable, that such does not impair or negate any other clause(s), all of which shall remain in full force and effect.

40. **Option for Renewal.** Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to renew this lease for an additional term of sixty (60) months, commencing at the expiration of the initial lease term, to wit, May 1, 2027, and terminating on April 30, 2032, or sooner as provided herein.

a) The base annual rental for the sixth twelve (12) months (year six) shall be Twenty-Six Thousand Four Hundred and Seventy and 86/100 Dollars (\$26,470.86), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the sixth year of this lease renewal.

b) The base annual rental for the seventh twelve (12) months (year seven) shall be Twenty-Seven Thousand Two Hundred Sixty-Four and 99/100 Dollars (\$27,264.99), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the seventh year of this lease renewal.

c) The base annual rental for the eighth twelve months (year eight) year shall be Twenty Eight Thousand and Eighty-Two and 94/100 Dollars (\$28,082.94), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the eighth year of this lease renewal.

- d) The base annual rental for the ninth twelve months (year nine) year shall be Twenty Eight Thousand Nine Hundred Twenty-Five and 43/100 Dollars (\$28,925.43), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the ninth year of this lease renewal.
- e) The base annual rental for the tenth twelve months (year ten) year shall be Twenty Nine Thousand Seven Hundred Ninety-Three and 19/100 Dollars (\$29,793.19), plus applicable sales tax, payable in equal installments in advance on the first day of each month for that month's rental, during the tenth year of this lease renewal.

The rental payment for each year of such lease and any renewal periods shall include the increase in any property tax applicable to such space over and above the billings for 2021. All rental payments shall be made to Lessor, at the address specified above or any subsequent address provided by Lessor in writing.

41. **Bankruptcy Remedies.** If the Lessee shall become insolvent or if bankruptcy proceedings shall be begun by or against the Lessee, before the end of the term of this Lease, the Lessor is hereby irrevocably authorized at its option, to forthwith cancel this Lease, as for a default. Lessor may elect to accept rent from such receiver, trustee, or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting Lessor's rights as contained in this Lease, but no receiver, trustee or other judicial officer shall ever have any right, title or interest in or to the above-described premises by virtue of this contract.

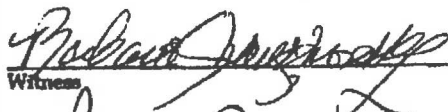
Signed this 22 day of April, 2022.

Lessor: Journey's End, Inc.

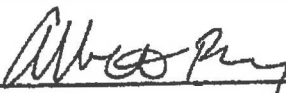
Lessee: South Florida Pain Management LLC

By: 
Sonia M. Pawluc
Its: President

By: 
Andrea A. Zolovras, M.D.
Its: Managing Member


Witness

Witness


Witness

Witness

Guaranty

The undersigned Guarantor, intending to be legally bound hereby, jointly and severally, does hereby guarantee to Lessor and its successors and assigns, complete performance of the foregoing Lease, for the term of the Lease or any extensions of such. Guarantor waives any right or necessity for any notice of default under the Lease as any condition for enforcement of the guaranty. Guarantors agree that no asserting by Lessor or any other forms of remedy or relief available to it under this Lease or the law generally will diminish or otherwise interfere with separate and independent claim made against this guaranty. Guarantor waives any defense under this guaranty stemming from any circumstances whatsoever outside the course of this lease and resulting in the termination of Lessee's liability including but not limited to, modification, release or discharge occurring through any bankruptcy or collateral proceedings, disability of Lessee, or transfer of Lease.

All of the terms, agreements and conditions of this Guaranty shall extend to and be binding upon the undersigned, her heirs, executors, administrators and assigns, and shall inure to the benefit of the Lessor, its successors, and assigns, and to any future owner of the fee of the premises referred to in the Lease, and to any mortgagee on the fee interest of the Lessor in the leased premises.

Lessee acknowledges that Lessor has relied on the fact and security of this Guaranty as a substantial inducement to execution of the Lease.

Executed in Martin County, Florida, this 22 day of April, 2022.


Witness


Guarantor-Andrea A. Zotos, M.D.


Witness

American Board of Pain Medicine

Andrea Audra Zotozas, MD

*having successfully met the requirements,
through written examination and other means that
validate qualifications, knowledge, and practice
in pain medicine, has been elected as a*

Diplomate
of the

American Board of Pain Medicine

Certification No. 210718

November 21, 2016
through
December 31, 2026



James P. Jones
President MD

William J. Zito
Secretary-Treasurer

American Academy

of

Physical Medicine and Rehabilitation



hereby certifies that

Andreas Zotos, MD, FACP

has been elected a

Fellow

of this Academy

November 12, 1999

John K. Mills, MD
President

John M. Rouns
Secretary

09999659

STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE

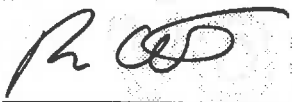
DATE	LICENSE NO.	CONTROL NO.
01/13/2021	ME 81304	740033

THE MEDICAL DOCTOR

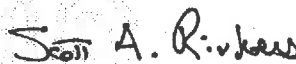
NAMED BELOW HAS MET ALL REQUIREMENTS OF
THE LAWS AND RULES OF THE STATE OF FLORIDA.

Expiration Date: JANUARY 31, 2023

ANDREA AUDRA ZOTOVAS
900 SE OCEAN BOULEVARD
SUITE 227
BUILDING C
STUART, FL - 34994



Ron DeSantis
GOVERNOR



Scott A. Rivkees, MD
State Surgeon General

DISPLAY IF REQUIRED BY LAW

EXPIRATION DATE: JANUARY 31, 2023

Your license number is ME 81304. Please use it in all correspondence with your board/council. Each licensee is solely responsible for notifying the Department in writing of the licensee's current mailing address and practice location address. If you have not received your renewal notice 90 days prior to the expiration date shown on this license, please visit www.FLHealthSource.gov and click "Renew A License" to renew online.

The Medical Quality Assurance Online Services Portal gives you the ability to manage your license to perform address updates, name changes, request duplicate licenses and much more.

It's simple. Log onto your MQA Online Services account today at <http://flhealthsource.gov/>. Select the "Account Login" button to access your account. For changes to your name, address or to request duplicate licenses, choose your selection from the dropdown list under "Manage My License". Your profession will open for renewal 90 days prior to your expiration date. When the renewal cycle opens for your profession, the "Renew My License" header will automatically display on your license Dashboard.

IMPORTANT ANNOUNCEMENTS

ARE YOU RENEWAL READY?

The Department of Health will now review
your continuing education records at the
time of license renewal.

To learn more, please visit
www.FLHealthSource.gov/AYRR

FOUNDATIONS FOR DISCIPLINE

You should be familiar with the Grounds for
Discipline found in Section 456.072(1),
Florida Statutes, and in the practice act for
the profession in which you are licensed.

Florida Statutes can be accessed at
www.leg.state.fl.us/Statutes

0999965

AC#
STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE

DATE	LICENSE NO.	CONTROL NO.
01/13/2021	ME 81304	740033

THE MEDICAL DOCTOR

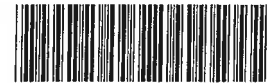
NAMED BELOW HAS MET ALL REQUIREMENTS OF
THE LAWS AND RULES OF THE STATE OF FLORIDA

Expiration Date : JANUARY 31, 2023

ANDREA AUDRA ZOTOVAS



THE MEDICAL DOCTOR



1:3 ZOTOVAS, ANDREA
338/525 900 SE OCEAN BLVD STE 227
SOUTH FLORIDA PAIN MANAGEMENT LLC
STUART, FL 34994-3501



DEA REGISTRATION NUMBER	THIS REGISTRATION EXPIRES	FEE PAID
BZ3973511	05-31-2024	\$888
SCHEDULES	BUSINESS ACTIVITY	ISSUE DATE
2,2N, 3,3N,4,5	PRACTITIONER	04-21-2021
ZOTOVAS, ANDREA SOUTH FLORIDA PAIN MANAGEMENT, LLC 900 SE OCEAN BLVD STE 227 SOUTH FLORIDA PAIN MANAGEMENT LLC STUART, FL 34994-3501		

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE
UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
WASHINGTON D.C. 20537

Sections 304 and 1008 (21 USC 824 and 958) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance.

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IT IS NOT VALID AFTER THE EXPIRATION DATE.

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE
UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
WASHINGTON D.C. 20537

DEA REGISTRATION NUMBER	THIS REGISTRATION EXPIRES	FEE PAID
BZ3973511	05-31-2024	\$888
SCHEDULES	BUSINESS ACTIVITY	ISSUE DATE
2,2N, 3,3N,4,5	PRACTITIONER	04-21-2021

ZOTOVAS, ANDREA
SOUTH FLORIDA PAIN MANAGEMENT, LLC
900 SE OCEAN BLVD STE 227
SOUTH FLORIDA PAIN MANAGEMENT LLC
STUART, FL 34994-3501

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⑤ ① our sign will say:

South Florida Pain Management, LLC
Andrea Zotovas MD

Thats exactly what we have now at
900 SE Ocean Blvd - Suite 227

- ⑥
1. NO other pain management is w/in 300 Feet
 2. NO pharmacy in the building
 3. Park pharmacy is closest. more than 200 feet away.

E 3.

Here is the shared parking agreement - For HS SE FIFTH ST
There are 34 available spaces.

964941

DECLARATION

DECLARATION OF COMMON USE, CROSS PARKING, AND ACCESS

THIS DECLARATION is made this 7 day of OCT 1992, by C.D.R. CORPORATION, a Florida corporation (hereinafter referred to as "Declarant").

Declarant is the Owner of property legally described in Exhibit "A" attached hereto, hereinafter referred to as the "Property".

Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions for the benefit of the Owners of the Property.

Declarant hereby declares that all of the Property described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the Property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the Property subject to this Declaration, or any part thereof, their heirs, personal representatives, successors in title and assigns, and this Declaration shall inure to the benefit of each Owner of the Property as described in Exhibit "A".

ARTICLE I - DEFINITIONS

Section 1 - Declarant shall mean and refer to C.D.R., Inc. a Florida corporation.

Section 2 - Owner or Owners shall mean and refer to one or more persons who hold the record title to, or an undivided interest in the record title to, any of the Property described in Exhibit "A".

Section 3 - Person shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 4 - Property or Properties shall mean and refer to the real property described in Exhibit "A" attached hereto including any portion thereof.

Section 5 - Survey shall mean and refer to that certain survey dated 9/1/92 - signature prepared by James E. Neuhaus, Inc., a copy of which is attached hereto as Exhibit "B".

ARTICLE II - COMMON USE

Section 1 - Common Use. The Owners of the Property described in Exhibit "A", including portions thereof, and further including all guests, servants, employees and invitees of such Owners shall

have the right to use in common with others for the purposes set forth below those portions of the Property identified in Exhibit "B" as Paved Areas.

Section 2 - Parking. Three portions of the Property identified in Exhibit "B" as Paved Areas and marked as Parking Spaces may be used by all Owners including their guests, servants, employees and invitees as parking areas for the parking of automotive vehicles and self propelled vehicles such as bicycles. All those using the Paved Areas may only use such in a reasonable manner that does not unreasonably interfere with the rights of all others to use such Paved Areas. The Declarant shall have the ability to designate parking within the paved areas shown on Exhibit "B". Such designation may be made in the deed of conveyance of a portion of the Property to any Owner or may be made by the Declarant in a separate writing recorded in the public records. This ability to designate parking shall terminate at such time as the Declarant has conveyed all of the Property.

Section 3 - Ingress and Egress. The Declarant hereby grants to all Owners and all guests, servants, employees and invitees of Owners a non-exclusive easement over and across those portions of the Property designated in Exhibit "B" as Paved Areas for access to all parking on the Property and for access to and from any portion of the Property to the adjoining public streets, including the alleyway bordering the northerly boundary of the Property.

ARTICLE III - UTILITIES

Declarant hereby grants to all Owners and all guests, servants, employees and invitees of Owners, and all public utility companies, a non-exclusive easement over, through, under and across the Property for the purpose of providing utility services to any improvements located on the Property. Such easement shall be only for existing utility conduits including the right, power and ability to maintain such conduits. Such easement may only be used so as not to unreasonably interfere with any other Owner's use of his portion of the Property.

ARTICLE IV - WELL AND SPRINKLER SYSTEM

Section 1 - Well. The Declarant hereby grants to all owners a non-exclusive easement over, through, under and across the Property for the purpose of access to the existing well located upon the Property as more particularly shown in Exhibit "B" attached hereto. The purpose of this easement is to allow the Owners to draw water from the existing well for the purpose of irrigating the lawn and shrubbery on the Property and for the further purpose of maintaining the existing well for such irrigation purposes.

Section 2 - Irrigation System. The Declarant hereby grants to all Owners and their servants and employees a non-exclusive easement over, through, under and across the Property for the purpose of using and maintaining the existing sprinkler system located upon the Property.

ARTICLE V - MAINTENANCE

Section 1 - Paved Areas. The Paved Areas shown on Exhibit "B" shall be maintained by the Owner of that portion of the Property upon which such Paved Area is located. Provided, however, that in the event any Owner, or any guest, servant, employee or invitee of an Owner damages a Paved Area located upon the property of another Owner, other than through normal wear and tear, the Owner causing such damage, either directly or indirectly through his guest, servant, employee or invitee, shall repair any such damage so caused.

Section 2 - Utilities. The Owner who receives utility service through a particular utility conduit shall be responsible for maintaining such conduit regardless of its location on the Property. Provided, however, that in the event an Owner or his guests, servants, employees or invitees damages a utility conduit, such Owner shall be responsible for repairing such utility conduit.

Section 3 - Irrigation System. The existing sprinkler system located upon the Property shall be maintained by the Owner of that portion of the Property upon which such sprinkler system is located. Provided, however, that in the event an Owner or his guests, servants, employees or invitees damages a portion of the irrigation system, regardless of its location, the Owner causing such damage, either directly or indirectly through his guest, servant, employee or invitee, shall repair any such damage so caused.

Section 4 - Well. The existing well located upon the Property shall be maintained by the Owner of that portion of the Property upon which such well is located. Provided, however, that in the event an Owner or his guests, servants, employees, or invitees damages the well, the Owner causing such damage, either directly or indirectly through his guest, servant, employee, or invitee shall repair any such damage so caused.

Section 5 - Timeliness. All maintenance and all repairs shall be made in a timely manner. In the event an Owner does not maintain a paved area, utility conduit, irrigation system, or well, as set forth above, and as delineated on Exhibit "B" attached hereto, in the same state of repair as such exists today, and in the further event that all of the remaining Owners of the Property give written notice to such Owner, hereinafter delinquent Owner, and such delinquent Owner continues for a period of five (5) days

after receipt of such written notice to fail to maintain such areas, the remaining Owners, in their discretion, may cease such maintenance to be made and the cost thereof shall be borne by the delinquent Owner failing to perform such maintenance after notice as aforesaid. The cost of such maintenance, performed by the remaining Owners, after notice to the delinquent Owner, shall constitute a lien against the Property of the delinquent Owner, which lien may be foreclosed in the same manner as foreclosure of mortgages.

ARTICLE VI - COMPLIANCE AND ENFORCEMENT

Every Owner, including their guests, servants, employees and invitees shall comply with all provisions of this Declaration. The Declarant, or any Owner, shall have the right to bring an action at law or in equity for damages or injunctive relief or for any other remedy available at law or in equity for any breach of this Declaration. Any Owner, by acceptance of a deed, agrees to be bound by this Declaration and all of the rights, duties, obligations and easements created herein.

ARTICLE VII - DECLARANT'S RIGHTS

Any or all of the rights and obligations of the Declarant may be transferred to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein and provided further that no such transfer shall be effective unless it is in a written instrument, signed by the Declarant and duly recorded in the public records of Martin County, Florida. Until such time as all of the Property has been conveyed by the Declarant, the Declarant may amend this Declaration in any manner whatsoever by written instrument executed by the Declarant and recorded in the public records of Martin County, Florida. Any such amendment by the Declarant shall not require the joinder of other Owners, provided, however, that any such Amendment by the Developer may not have a materially adverse effect upon the Property rights of any Owner. Furthermore, no Amendment may be adopted which would effect or impair the priority of any mortgagee or the validity of the mortgage held by such mortgagee, or otherwise adversely effect any such Mortgagee, without the prior written consent of such mortgagee. After all of the Property has been conveyed by the Declarant, this Declaration may only be amended by a written document executed by all of the then Owners of the Property. After the Declarant has conveyed all of the Property to Owners other than the Declarant, the Declarant shall have no liability or responsibility with respect to the Property.

ARTICLE VIII - COVENANT RUNNING WITH THE PROPERTY

All of the terms, conditions, rights, duties, obligations and easements created herein shall be deemed to be covenants running with the Property binding and enforceable against all Owners of the

Property. Any Owner of the Property, by acceptance of a deed, agrees to execute such other and further assurances as may be necessary to maintain, support and defend the terms and conditions set forth herein.

ARTICLE IX - MISCELLANEOUS

Gender. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Successors and Assigns. The terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

Captions. The captions inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

Invalidity. If any clause, provision or portion of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement nor any other clause, phrase, provision or portion hereof to other persons or circumstances, and it is also the intention of the parties to this Agreement that in lieu of each such clause, phrase, provision or portion of this Agreement that is invalid or unenforceable, there be added as a part of this Agreement a clause, phrase, provision or portion as similar in terms as such invalid or unenforceable clause, phrase, provision or portion as may be possible and be valid and enforceable.

Attorneys' Fees. The parties hereto agree that the person awarded the net judgment in any court proceeding for the enforcement, defense or interpretation of any person's rights under this Agreement, whether it be at trial, on appeal or in bankruptcy proceedings, shall be entitled to all court costs and reasonable attorneys' fees from the non-prevailing person.

IN WITNESS WHEREOF, this Declaration has been executed the day and year first above written.

Witnesses:

C.D.K. CORPORATION, a Florida corporation

Susan L. D. Christo
Susan L. D. Christo

BY: *Daniel J. Lundstrom*
DANIEL J. LUNDSTROM,
its President

Printed Name

Sam T. Steyer

Sam T. Steyer
Printed Name

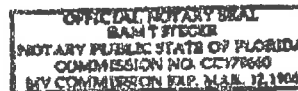
STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 7th day of October, 1992 by DANIEL J. LUNDSTROM, the President of C.D.K. CORPORATION, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced Pa. driver's license as identification and did (did not) take an oath.

Sam T. Steyer
Notary Public
My commission expires:
My commission number:

Sam T. Steyer
Printed Name

Prepared By:
Terence P. McCarthy, Esq.
DeSantis, Cook & McCarthy
2001 E. Ocean Blvd., 2-A
Stuart, Florida 34996



D:\DECLAR.COR (October 2, 1992)

6

OR BXD 9 8 0 PG 1 4 0

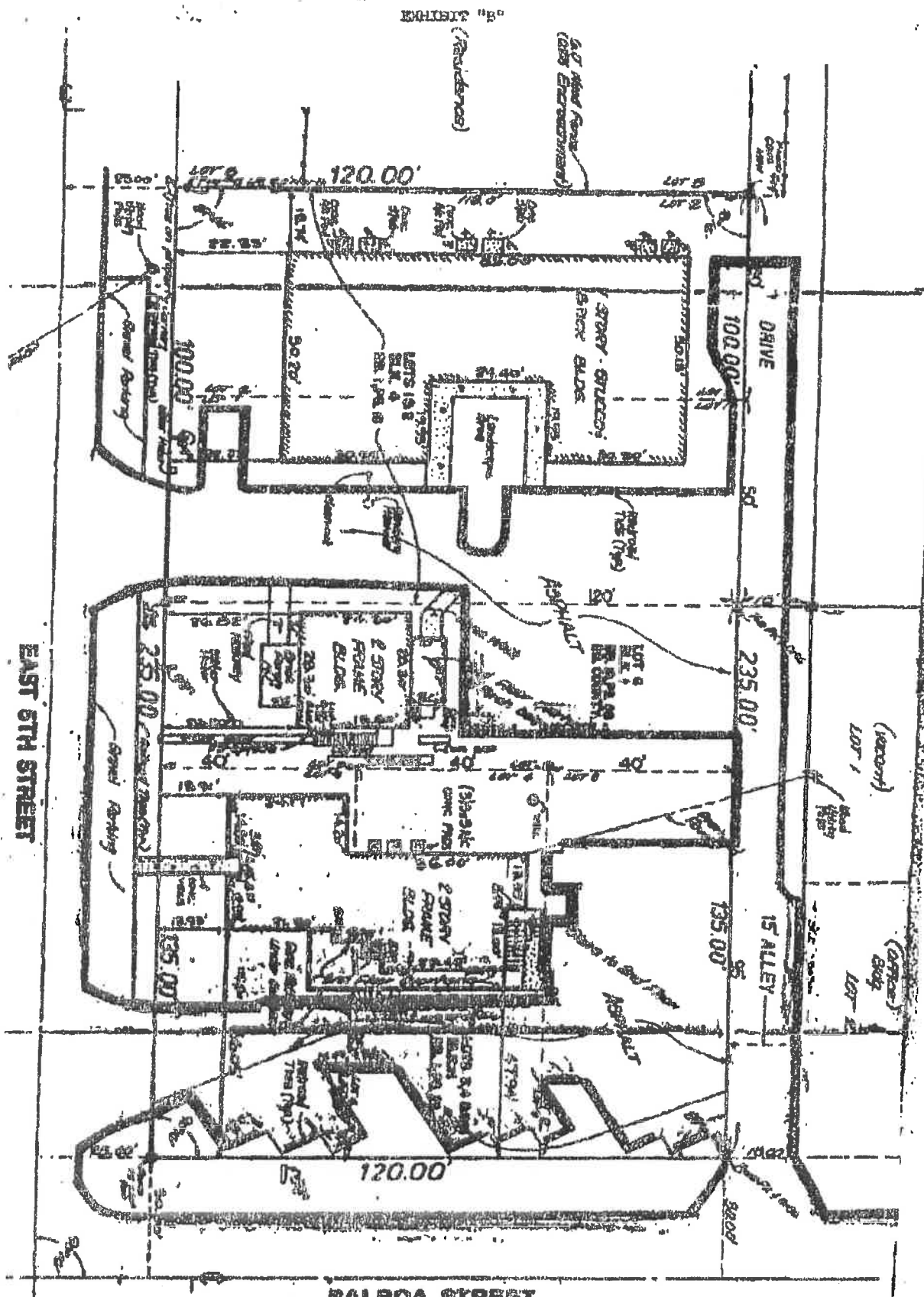
EXHIBIT "A"Legal Description of Real Property

PARCEL I: Lots 1 and 2, Block 4, FIRST ADDITION TO THE REVISED PLAT OF HIGHLANDS SUBDIVISION, according to the plat thereof, dated August 9, 1926, recorded in Plat Book 1, Page 18, Martin County, Florida, public records.

PARCEL II: Lot 6, Block 1, STEPMANN PARK, FIRST ADDITION, according to the plat thereof, dated October 6, 1924, recorded in Plat Book 10, page 38, Palm Beach (now Martin) County, Florida, public records.

PARCEL III: Lots 3, 4, and 5, Block 1, STEPMANN PARK, according to the First Addition, and Revised Plat thereof, filed January 16, 1926, recorded in Plat Book 1, page 29, Martin County, Florida, public records.

ORDKO 98 0 PG 1 4 1



Description: Martin, FL Document-Book Page 980.1135 Page: 8 of 9 BKN 9 8 0 PGI 1 4 2
 Order: 300203708 Comment:

CONSENT

The undersigned mortgage holder hereby certifies that it is the holder of a certain mortgage lien or encumbrance on the land subject to the Declaration of Common Use, Cross Parking, and Access ("Declaration"), said Mortgage being recorded in O.R. Book 781, page 334, Martin County, Florida, Public Records, and does consent and subordinate the lien of its Mortgage to the foregoing Declaration.

Dated this 7th day of OCTOBER, 1992.

Signed, sealed and
delivered in the
presence of:

Terrance P. McLaughlin
TERRANCE P. McLAUGHLIN

JAMES E. NEUBAUS
JAMES E. NEUBAUS, as Trustee

Thomas R. Baker
Print Name Thomas R. Baker

Address:

Print Name

Dated: 10/7/92

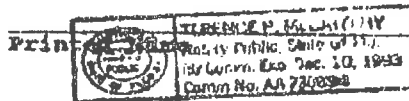
STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 7th day of OCTOBER, 1992 by JAMES E. NEUBAUS, as Trustee. He is personally known to me or has produced identification and did (did not) take an oath.

Terrance P. McLaughlin
Notary Public

My commission expires:

My commission number:



12 OCT 12 PM 2:46
CLERK OF CIRCUIT COURT
D.C.

OR BK0 980 PGI 143

Description: Martin, FL Document-Book, Page 980.1135 Page: 9 of 9
Order: 300203708 Comment:

TESTN # 2441276 OK BK 1511 PG 1971 RECD 10/16/2000 11:07 AM
MARSHA EWING MARTIN COUNTY DEPUTY CLERK L Wood

AMENDMENT TO DECLARATION OF COMMON USE,
CROSS PARKING AND ACCESS AGREEMENT

WHEREAS on October 7, 1992 C.D.K. CORPORATION,
Declarant, filed a Declaration of Common Use, Cross Parking
and Access Agreement, as recorded in Official Records Book
980, Page 1135, Martin County, Florida public records,
imposing certain covenants, conditions and restrictions on
the real property attached and described in Exhibit "A"
therein and attached hereto (the "Property"); and

WHEREAS the Declarant provided that all of the
Property had been conveyed by the Declarant, the
Declaration may be amended by a written document executed
by all of the then owners of the Property; and

WHEREAS the owners of the Property described in
Exhibit "A" hereto are desirous of amending the Declaration
of Common Use, Cross Parking and Access Agreement, it is
agreed as follows:

1. Article II, Section 2 - Parking is hereby amended to
delete that section which states "The Declarant shall have
the ability to designate parking within the paved areas
shown on Exhibit "B". Such designation may be made in the
deed of conveyance of a portion of the Property to any
Owner or may be made by the Declarant in a separate writing
recorded in the public records. This ability to designate

OR BK 1511 PG 1972

parking shall terminate at such time as the Declarant has conveyed all of the Property."

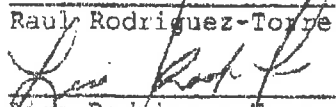
Furthermore, by the execution of this document, all of the property owners hereby acknowledge and expressly state that the Declarant has not "designated" any of the parking as shown on Exhibit "B" of the original Declaration of Common Use, Cross Parking and Access Agreement.

2. All references to the existence and maintenance to the "well" are deleted in their entirety.

IN WITNESS WHEREOF the foregoing was executed this 12 day of OCT., 2000.

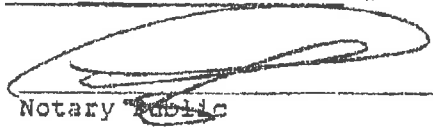

Thomas A. Fort

Lisa Rodriguez-Torres


Raul Rodriguez-Torres

Lisa Rodriguez-Torres

STATE OF FLA.
 COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 12 day of OCT., 2000, by RAUL RODRIGUEZ-TORRES and LISA RODRIGUEZ-TORRES, husband and wife, who are personally known or produced as identification.


 Notary Public

Sep-01-00 09:10P The

A. Fogt, Esq.

286+32

P.03

OR BK 01511 PG 1973

[Signature]
Sally Booth

Nicholas A. Vincenzo
 Nicholas A. Vincenzo

STATE OF Florida
 COUNTY OF Martin

The foregoing instrument was acknowledged before me
 this 2nd day of October, 2000, by NICHOLAS A.
 VINCENZO, who is personally known or produced
 as identification.



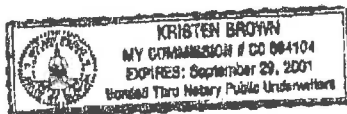
Kristen R. Brown
 Notary Public

[Signature]
DAVID A. HUTCHINSON

James A. Hutchinson, Tr.
Ann R. Hutchinson, Tr.

STATE OF Florida
 COUNTY OF Martin

Roberts The foregoing instrument was acknowledged before me
 this 2nd day of October, 2000, by JAMES A.
 HUTCHINSON, TRUSTEE and ANN R. HUTCHINSON, TRUSTEE, husband
 and wife, who are personally known or produced
 as identification.



Kristen R. Brown
 Notary Public

OR BK 01511 PG 1974

 Nicholas A. Vincenzo

STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me
 this ____ day of _____, 2000, by NICHOLAS A.
 VINCENZO, who is personally known or produced
 _____ as identification.

 Notary Public

 James A. Roberts, Tr.

 Ann R. Hutchinson, Tr.

STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me
 this 6th day of Sept, 2000, by JAMES A. ROBERTS,
 TRUSTEE and ANN R. HUTCHINSON, TRUSTEE, who are personally
 known or produced _____ as identification.

 Notary Public



Arlene Denise Simms
 Commission # CC 992098
 Expires May 18, 2004
 Bonded Through
 Atlanta Bonding Co., Inc.

08 BK 07311 PG 1973

EXHIBIT "A"
Legal Description of Real Property

PARCEL I: Lots 1 and 2, Block 4, FIRST ADDITION TO THE REVISED PLAT OF HIGHLANDS SUBDIVISION, according to the Plat thereof, dated August 9, 1926, recorded in Plat Book 1, Page 18, Martin County, Florida, public records.

PARCEL II: Lot 7, Block 1, STYPMANN PARK, FIRST ADDITION, according to the plat thereof, dated October 6, 1924, recorded in Plat Book 10, Page 56, Palm Beach (now Martin) County, Florida, public records.

PARCEL III: Lots 3, 4 and 5, Block 1, STYPMANN PARK, according to the First Addition, and Revised Plat thereof, filed January 16, 1926, recorded in Plat Book 1, Page 29, Martin County, Florida, public records.

City of Stuart
Development Department
121 SW Flagler Avenue
Stuart, FL 34994
Ph. 772-288-5300
Fax 772-288-5388

AFFIDAVIT ATTESTING TO NOTIFICATION

Andrea Zotores, being first duly sworn, depose(s) and say(s):

That (I am / we are) the owner(s) or petitioner(s) of the following described property which constitutes the location for which notification is required:

715 SE 5th St, Stuart, FL 34994

That a copy of the notice was sent by regular U.S. Mail on (Aug 16 '22) to the property owners within 300 feet of the subject property; and

That a list of the property owners and their addresses is on file with the City of Stuart; and

That a photograph showing the placement of the notification sign be made a part of this Affidavit; and

That notice was sent and property was posted 15+ days prior to the scheduled public hearing(s) for this item.

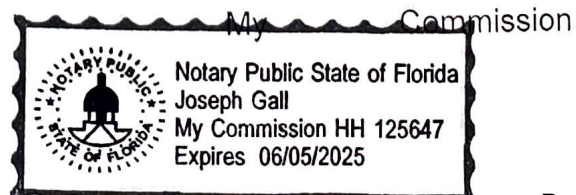
Andrea Zotores
SIGNED (PROPERTY OWNER / AUTHORIZED AGENT)

SIGNED (PROPERTY OWNER / AUTHORIZED AGENT)

STATE OF FLORIDA, COUNTY OF Palm Beach
Sworn and subscribed before me by means of ☒ physical presence or
____ online notarization, this 05 day of August,
By Andrea Zotores
Personally Known OR Produced Identification

FL IDL
Type of Identification Produced:

Notary Public, State of FL
expires: 6/5/2025
(Notary Seal)





**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 9/12/2022

Prepared by: Bonnie C. Landry

Title of Item:

DOGSWORLD URBAN CODE CONDITIONAL USE (QUASI-JUDICIAL)(RC):

RESOLUTION No. 73-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING A MAJOR URBAN CODE CONDITIONAL USE APPROVAL TO JUSTIN PHILLIPS, (CONTRACT PURCHASER) FOR THE PROPERTY LOCATED AT 400 SW 7TH STREET, CONSISTING OF APPROXIMATELY 1.62 ACRES; TO ALLOW THE USE OF KENNELS FOR DOGSWORLD; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR A TIMETABLE OF DEVELOPMENT; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

DogsWorld proposes to develop another location for its dog daycare and boarding services at 400 SW 7th Street. Kennels are a conditional use requiring consideration by the City Commission. Pursuant to the Urban Overlay Zone, if a use is not listed then it is only allowed by Conditional Use Approval. In the current circumstances, Dog Hotel is not a listed use.

Funding Source:

Recommended Action:

Review the item and consider approval with conditions.

ATTACHMENTS:

1. A.1 Resolution 73-2022-01
2. A.2 Resolution 73-2022 'Exhibit D'
3. B. Staff Report DogsWorld
4. C. DogsWorld_application_Z22060003
5. D. Attachments/Backup Material
6. E.1 Affidavit Notification



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION NUMBER 73-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING A MAJOR URBAN CODE CONDITIONAL USE APPROVAL TO JUSTIN PHILLIPS, (CONTRACT PURCHASER) FOR THE PROPERTY LOCATED AT 400 SW 7TH STREET, CONSISTING OF APPROXIMATELY 1.62 ACRES; TO ALLOW THE USE OF KENNELS FOR DOGSWORLD; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR A TIMETABLE OF DEVELOPMENT; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City Commission held a properly noticed hearing at a regularly scheduled City Commission to consider the application by Justin Phillips, representing DogsWorld (contract purchaser), for a 1.62- acre property; and

WHEREAS, the Community Redevelopment Board held a properly noticed hearing at a regularly scheduled meeting to consider the applications of the Petitioner and recommended approval of the Major Urban Code Conditional Use on September 6th, 2022; and

WHEREAS, on September 12th, 2022, the City Commission held a properly noticed hearing at a regularly scheduled City Commission to consider the application by the Owner and Applicant, to consider the Major Urban Code Conditional Use; and

WHEREAS, the Owner and Applicant have committed to the City that its development will comply with all development codes, plans, standards, and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon this resolution; and

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the Applicant, Justin Phillips, is requesting a Major Urban Code Conditional Use approval to allow for development of Kennels, on 1.62-acre parcel, and

WHEREAS, the Major Conditional Use approval shall run with the land.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1:

The foregoing recitals are true and adopted as findings of fact and conclusions of law.

SECTION 2:

The legal description of the property is set forth in **Exhibit ‘A’** attached hereto and made a part hereof by reference. A Map depicting the Property is attached hereto as **Exhibit ‘B’** and made a part hereof by reference. The conditions of development attached hereto as **Exhibit ‘C’** and made a part hereof by reference, and each shall constitute one of the approved documents.

SECTION 3:

The following documents are on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit ‘D’**, hereinafter the ‘Approved Documents’, shall be deemed a part of the development conditions, and shall supplement any earlier approvals:

- a The DogsWorld Conditional Use Permit Project Narrative, prepared by *DogsWorld*, dated June 20, 2022 (13 Pages);
- b Noise Study, prepared by *ED+A acoustics*, dated August 25, 2022.

SECTION 4:

Except as otherwise provided herein, no development permits, site permits or building permits shall be issued by the City except in compliance with the aforesaid Approved Documents. The failure of the Applicant to comply with the Approved Documents, or with any term or condition of development set forth in this resolution, shall be deemed a zoning violation and no further permits, or other development approvals or orders shall be issued by the City to the owner until the violation has been resolved, and the matter may become the subject of a code enforcement action brought by the City. This section shall not impair the due process or other legal rights of the Developer to seek administrative or judicial redress.

SECTION 5:

Following the adoption and acceptance of this by the Owner, and in addition to any other action for failure to otherwise comply with the Approved Documents, the City Development Director may obtain a hearing before the City Commission and shall thereupon give at least five (5) days written notice of the time, date, and location of the hearing, along with specific notice of the alleged breach. At the hearing before the City Commission the Applicant may appear and may contest the allegation of breach or explain the reason or reasons for the breach. Upon a finding of a material breach of the Approved Documents and therefore, the Resolution(s) adopting the same, the City Commission may impose any or all the following:

- a Initiate the process to amend or repeal this or any other development order pertaining to the development.

- b Impose an administrative penalty of up to \$1,000.00 for each violation, and up to \$5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this resolution by the Applicant shall be considered a zoning violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation found continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 6:

All development orders in conflict with this resolution or any part thereof is hereby repealed to the extent of such conflict. If any provision of this resolution conflicts with any contractual provision between the City and the Property Owner(s) or Applicant(s) of the site, this resolution shall prevail.

SECTION 7:

If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

SECTION 8:

The complete execution and recording of this Resolution by the City Clerk shall occur no later than 90 days from the date of this approval, failing which this resolution shall become void.

SECTION 9:

Upon complete execution of this Resolution, including the Acceptance and Agreement by the Owner, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day of _____, 2022.

Resolution #73-2022
400 SW 7th Street
Major Urban Code Conditional Use

ATTEST:

MARY R. KINDEL
CITY CLERK

MERRITT MATHESON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

STATE OF _____

COUNTY OF _____

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE FOREGOING RESOLUTION, AND ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE FOREGOING RESOLUTION. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY, ITS CONDITIONS, AND THE DEVELOPMENT DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS RESOLUTION MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ADMINISTRATIVE ACTIONS AND PENALTIES MAY BE TAKEN AGAINST THE UNDERSIGNED, ITS SUCCESSORS OR ASSIGNS, BY THE CITY, INCLUDING BUT NOT LIMITED TO SANCTIONS DESCRIBED IN THIS RESOLUTION, CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING SUSPENSIONS OR REVOCATIONS, AND ANY OR ALL OTHER APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

APPLICANT: Justin Phillips

Print Name: _____

Signature: _____
Print Name: _____

Print Name: _____

PROPERTY OWNER: Rich Goldman

Signature: _____
Print Name: _____

OWNERS ACKNOWLEDGMENT

STATE OF FLORIDA,
COUNTY OF _____

The foregoing instrument acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2022, by _____ who ☐ is personally known to me or ☐ has produced _____ as identification.
(Notary Seal)

Signature of Notary Public

Printed Name: _____

Resolution #73-2022
400 SW 7th Street
Major Urban Code Conditional Use

Exhibit A – Legal Description

UNIT 1 RPFC COMMERCIAL CONDO PER DOC IN OR 2499/1296 CONSISTING OF 70,614 SF
LAND W/1 STY OFFICE BLDG

Exhibit B
Location Map

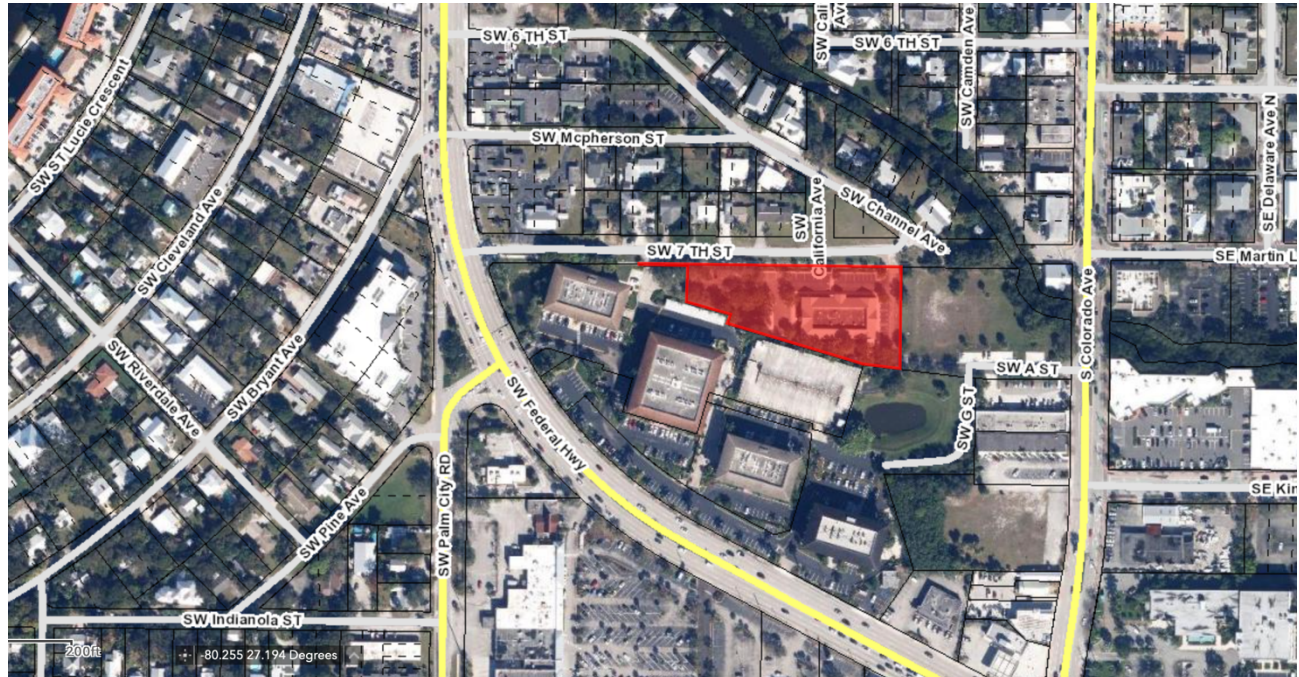


Exhibit C
Conditions of Approval

1. The use of the site will be for dog lodging (kennel), dog daycare, basic grooming, and the associated offices.
2. The following documents and plans are attached to this Major Urban Code Conditional Use:
 - a. Site Plan by Cotleur & Hearing, dated July 29, 2022, sheet 1 of 3.
 - b. Landscape Plan by Cotleur & Hearing, dated June 17, 2022, sheets 2 and 3 of 3.
 - c. Drainage Statement by Velcon Engineering & Surveying, LLC, dated July 22nd 2022.
 - d. Architectural Renderings (2 sheets) by Jill Maraist, MB Design.
3. Outdoor exercise areas shall be screened with an opaque six-foot high fence or wall as required by Sec. 2.06.18 in the City of Stuart Land Development Code.
4. Use of the outdoor exercise area and dog walking shall only be between the hours of 6:00 a.m. and 8:00 p.m.
5. The number of dogs in the outdoor exercise area shall be limited to a total of 10 dogs at any one time (5 in the Large Dog Park and 5 in the Small Dog Park).
6. Building permits will not be issued until building permit applications, deemed sufficient for permit review under City codes and standards, for building improvements has been submitted.
7. Interior build-out construction plans will be subject to compliance with fire codes and standards.
8. A detailed site plan, which complies with City of Stuart Urban Code identifying; architectural improvements, landscaping, dumpster location and parking provision will be submitted and approved prior to certificate of occupancy.
9. A building permit shall be obtained no later than 12 months from the approval date of the major urban code conditional use and a certificate of occupancy shall be obtained no later than 30 months from the issuance of a building permit.
10. Prior to the certificate of occupancy, a dumpster enclosure will be required which will include provision for recycling. Detailed plans and location for the dumpster shall be delineated on the site plan.

Resolution #73-2022
400 SW 7th Street
Major Urban Code Conditional Use

Exhibit D
Approved Documents

PROJECT NARRATIVE



An Entire World

DEVOTED TO YOUR BEST FRIEND

DogsWorld is where dogs have the most fun and fulfillment in the healthiest and safest environment when mom and dad are away from home. Whether your furry friend visits us for dog boarding, dog daycare, or an appointment at our spa, they can expect loving, expert care in a setting built for happy pets.

Location Description & Purpose

The location of this project is 400 SW 7th, Stuart, FL. This location is a is currently a 12,360 SF office building on a 1.62-acre parcel of land. This property is part of the Royal Palm 5 Condo association and will require minimal improvement to repurpose the property into a dog resort. Currently surrounding the property are retail, office and residential. For details on site improvements see “Changes to Site” on page 4

At DogsWorld, we are firm believers in what we call “The Dog Lifestyle.” The Dog Lifestyle recognizes that our dogs are not just pets or accessories, but full-fledged family members for whom we want the very best. There are no other pets that we interact with, exercise with, do sports with and take out with us into the world and include in our lives as much as dogs. Dog owners love to talk about their dogs and take their dogs out to meet other dog owners and their dogs. We want them to live the happiest and most enriching lives possible. We understand that, like us, they are extremely social animals and when we have to be apart from them, we miss them and know how much they miss us.

Our mission at DogsWorld Resort is to make sure that your dog will have the most fun, fulfilling time they could have, in the healthiest and safest environment possible, when you can’t be there to take care of them. That is our promise, whether they come for extended lodging, daycare or just a quick visit to our spa. In order to make this a reality we have designed a new, better kind of experience so that both our clients and their canines can enjoy The Dog Lifestyle to the fullest.

At DogsWorld, we only have all natural, North American, environmentally friendly and high-quality products. In addition, we give your dog only filtered water throughout their day. Your furry friend will have plenty of indoor and outdoor playtime, and appropriate down time in between.



Justification Statement

The purpose of the Urban Code is to encourage redevelopment, and generally to promote a sense of place within the Urban Code district. DogsWorld Is the perfect redevelopment for the City of Stuart to fit that changing sentiment of what a City should incorporate. The repurposing of the building will be seamless as there are very few changes that will have to be made to the existing building at 400 SW 7th Street which was built in 2003. The additional walls that will be incorporated will blend in with the current building and conform to the City of Stuart's desire to promote traditionally building types with durable construction which is harmonious with the architectural heritage of Downtown Stuart. The Urban code is meant to support a sense of place and what better way to have locals feel a sense of place than be able to bring their best friends close to work where they can see them or have ease of access once they are off of work. A Dogs Resort will also help keep the City of Stuart residents happy as they know their fur babies will be comfortable being close to home.

Rezoning Analysis

The use is similar to the veterinarian use which is an allowed in Urban Center zoning. The proposed outside play area is a deviation from code as it is not within an enclosed building area and therefore a Conditional Use Approval is required. Through the conditional use process, the applicant will demonstrate their commitment to mitigate any negative conditions potential with the proposed use. .

Currently, the property is zoned Urban Center with surrounding zonings of Urban Highway and Urban Neighborhood. A property at 1070 NW Federal Hwy, Stuart houses a pet grooming and boarding location known as Dogstop. Dogstop is zoned urban highway and has the same landuse of Downtown as our property at 400 SW 7th Street.

Also, the property at 400 SW 7th Street previously was B-2 zoning. B-2 zoning allows for Kennel services which would be the use that Dogsworld is applying for.

Changes to Site

What makes 400 SW 7th Street, Stuart, FL an ideal site for DogsWorld is that there will be very few changes needed to be made in order to repurpose the site into a dog resort.

Exterior:

1. Proposed small dog park on East side of building comprising of approximately 2,300 SF. This park will have a 6' high white PVC fence
2. Proposed Large dog park on West side of the building comprising of approximately 6,750 SF. This park will have a 6' high concrete block wall and PVC fence.
3. ADA Parking spots will be relocated to the North Side of the building. There will be three 12' wide parking spots across the street from the main entrance to the building. The far left and middle ADA parking spots will have a 5' wide walking area in between and another 4' wide walking area on the east side next to the crosswalk.

Interior:

1. Addition of three interior play areas made from Mason Company's mobile daycare room dividers. Two of the play areas will each consist of approximately 1,200 SF and the third will be approximately 650 SF

Neighborhood Meeting

DogsWorld held a neighborhood meeting to discuss using the location at 400 SW 7th St. project on May 18th, 2022 with their potential new neighbors. The goal was to explain what DogsWorld represents, explain how they operate, and get ahead of any concerns the neighboring community might have.

At the meeting, there were 4 main concerns that the neighborhood expressed: Traffic, Noise, Odor, and Hours of Operation.

Operational Questions

1. Noise

- a. Site specific study *(forthcoming)
- b. Db levels *(forthcoming)
- c. Operational procedures that help reduce noise:
 - i. 15 dogs or less in park at one time
 - ii. Dogs actively engaged by highly trained staff
 - 1. Staff receive specific training on redirecting and correcting excessive barking
 - 2. Dogs who are engaged and mentally and physically stimulated are less likely to nuisance bark
 - 3. Our outdoor operations in Jupiter do not ever result in loud, excessive barking that exceed the city's noise statute

2. Odors

- a. Solid waste is bagged and put into trash receptacles immediately. Dog waste receptacles are emptied into the dumpster nightly and removed by regularly scheduled garbage pickup through Waste Management. Dog waste receptacles are disinfected with the Wysiwash system regularly.
- b. Entire dog park is disinfected and deodorized twice every day, first around 12pm and again at the end of the day (6:30pm). We spray down the entire surface, removing all stains and odors with our Wysiwash system. Wysiwash attaches to a standard garden hose and shoots a dissolved calcium hypochlorite solution through a high-pressure nozzle to effectively sanitize, deodorize and clean all the surfaces in our dog parks. It has been used for more than 20 years in many industries to safely clean and disinfect surfaces. The biodegradable cleaning solution used with the Wysiwash system is also ultra-safe to the environment, so there is no need to worry about dangerous residual material that can cause harm. Hypochlorous acid has been used for decades to safely sanitize drinking water, swimming pools, and processed food, so users can trust Wysiwash to eliminate pathogens without endangering people, pets or the environment. For more information see: <https://www.wysiwash.com/>
- c. Our canine turf will have anti-microbiotic and anti-odor properties, it is generally more hygienic and less susceptible to odor than is natural grass and soil.

3. Guest Supervision

- a. 24hr via surveillance cameras
- b. No overnight staff – increases liability because hazard of fire and burglary increase.

4. Hours of Operation

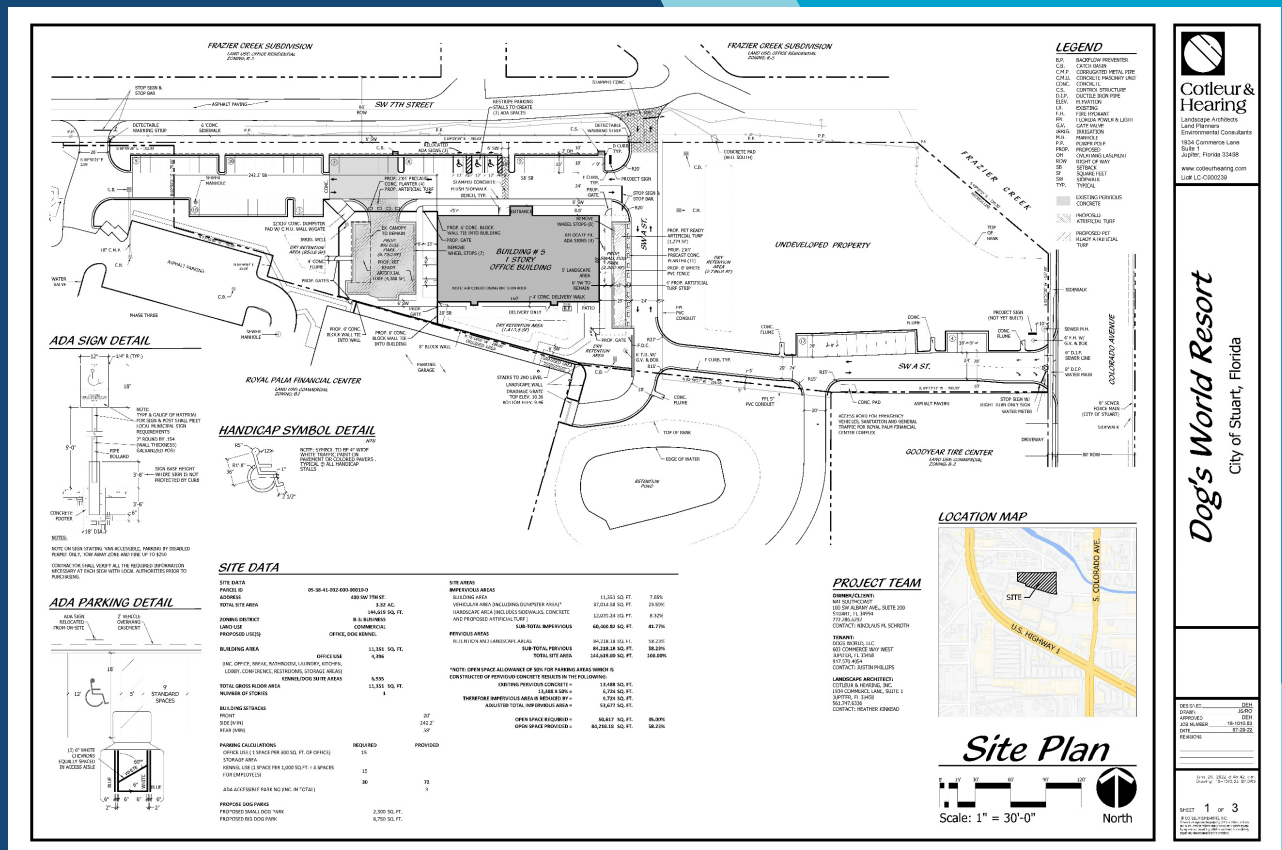
- a. M-F 7am-7pm: Our dogs have business walks at 7:30 am and again at 5:30 pm. They enjoy a playtime rotation between inside and outside from 9 am - 11 am and 1 pm - 4 pm. The dogs who are lodging are inside their rooms overnight. M-F dogs will be in our outdoor areas between the hours of 7:30am to 6pm.
- b. On weekends the operational hours of the outdoor areas will be between 8am-3pm. Lodgers are taken out again for business walks between 7-8pm. They are otherwise in their rooms overnight.

Architectural Renderings and Elevations



DogsWorldResort.com | 561-320-9122 | info@DogsWorldResort.com

Site Plan



*full size plan are attached and printed

Legal Description

UNIT 1 RPFC COMMERCIAL CONDO PER DOC IN OR 2499/1296 CONSISTING OF 70,614 SF LAND W/1
STY OFFICE BLDG

DogsWorldResort.com | 561-320-9122 | info@DogsWorldResort.com

Flooring

At DogsWorld, we care about the health and safety of our dogs. For that reason, our indoor play areas utilize rubberized canine specific mats. Our outdoor dog park will have canine turf so the dogs can run, jump, and play to their hearts' content, in a safe, easy to sanitize environment. Kennel areas will be floored with either ceramic tiles or epoxy.



Kennels

Our Hotel Rooms will be a combination of prefabricated kennels from Stone Mountain Pet Products and individually built out suites with ceramic tile flooring and walls to 4' and lined with FRP above 4'. Through years of experience, we have found that such construction provides a safe, sanitary, easy to clean environment for our guests.

<https://stonemountainpetproducts.com>



Interior

We utilize Mason Company's mobile daycare room dividers to allow us to customize our play areas.

www.masonco.com



Exterior Fencing

DogsWorld Stuart will use 6' concrete block walls for security and privacy in their large dog outdoor area. The concrete block walls will either be stucco with a "float finish," smooth or coarse, machine spray, dash and troweled or have a textured finish.

DogsWorld uses Weatherables Augusta 6' Privacy Fencing for security and privacy in their small dog outdoor area. Known as the strongest privacy fencing on the market, the Augusta privacy fence is made from high- quality materials and is reinforced with aluminum inserts for additional strength and stability. This vinyl fencing won't chip, rot, or crack, and is easy to clean.

www.weatherables.com



Artificial Turf

All outdoor dog park areas will be turfed with an easy to sanitize, canine specific artificial turf from our local partner. Their product is durable, safe and easily maintained. It is a permeable surface and will not have any effect on the sites drainage.

www.coastalsyntheticurf.com



Wall Coverings

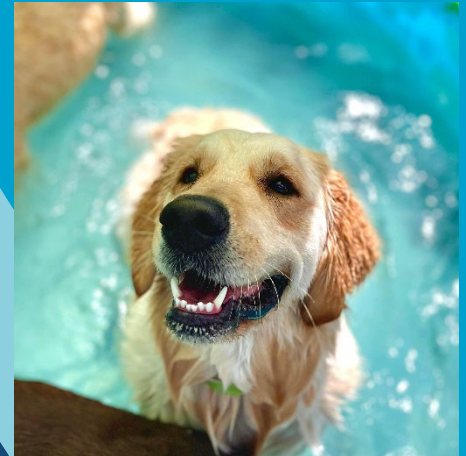
We use commercial FRP for wall areas susceptible to wear and tear from our canine guests.

DogsWorldResort.com | 561-320-9122 | info@DogsWorldResort.com

Boarding

DogsWorld is the premier destination for dog boarding in Jupiter, FL. Our high quality, full-service dog resort offers award-winning dog boarding in our multi-million-dollar canine hotel complete with large rooms and suites. Our luxury hotel services include memory foam beds, gourmet treats and a nightly tuck in service. Our furry guests will have access to all resort amenities, including our specially designed indoor and outdoor dog parks. It's no mystery why DogsWorld has won the Best of Jupiter Award every year since 2016.

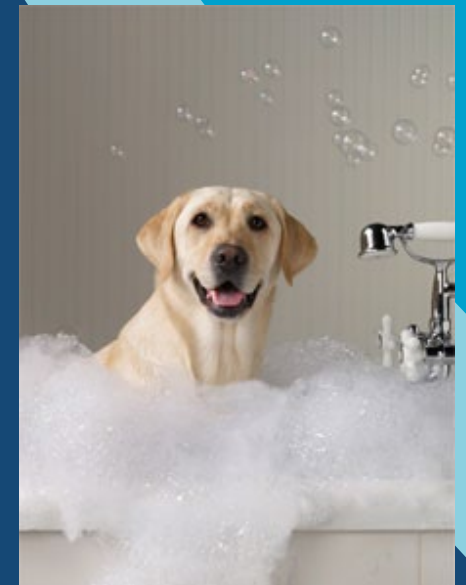
As part of our "Dog Lifestyle" philosophy, we understand you want peace of mind while away from your furry family member. All pets are monitored around the clock by professional and caring staff who treat your pets like family. Our canine guests enjoy the love, care and attention they deserve while you're



Daycare

DogsWorld is like an amusement park for dogs! Our 7,000 square foot outdoor dog park, The Wag Zone, is a safe and secure place for dogs to run, jump, and play to their hearts' content. Rainy day? No problem! Our three air-conditioned indoor playrooms offer tons of space to romp and play.

We offer a variety of mentally and physically stimulating daycare options to suit dogs of all ages, breeds, and personalities. Every daycare program is fully supervised by our highly trained caregivers while the pups enjoy all the playtime and attention they crave.



Grooming

We know how important your dog's appearance is to you and to his or her health. And we know that after a time apart, nothing is better than picking up a clean, happy and healthy pet that looks and smells great! That's why the spa at DogsWorld Resort offers baths and spa services using all natural, environmentally friendly shampoos and conditioners.

DogsWorldResort.com | 561-320-9122 | info@DogsWorldResort.com

About Our Owner

Justin is a “recovering attorney”, published author and lifetime dog lover. He eventually realized he wanted to work with dogs and their owners and now has 15 years of experience in the dog care industry, including dog training, boarding and daycare in New York City. In 2013, the call of Florida’s climate and his desire to build a new, better kind of dog care facility motivated him to create his dream: DogsWorld.

DogsWorld is a luxury resort and daycare facility based on Justin’s commitment to The Dog Lifestyle and treating dogs as respected family members who deserve the best care possible when they can’t be with their families. DogsWorld is designed with the health, safety and happiness of our canine guests, as well as their human parents’ satisfaction and peace of mind, at the forefront of everything we do.



About Our General Manger

Katie is a graduate of Florida Atlantic University and has extensive experience in the dog care industry. She previously worked at Town & Country Animal Hospital in Palm Beach Gardens. There she was an integral part of their facility from its start. Katie filled multiple roles including front desk receptionist, veterinary technician and kennel technician.

Katie started with DogsWorld before its inception in 2016. She was paramount in creating the operation manual/SOPs, training the new team as well as ensuring the health and safety of all the pet guests in her care. Her team is now an industry leader and they've won Best of Palm Beach County and the Best of Jupiter for Pet Care awards. With her continued success, she was given the opportunity to become a partner of DogsWorld in 2022. Her goal is to actively open and operate many more DogsWorld locations.

DogsWorldResort.com | 561-320-9122 | info@DogsWorldResort.com

Awards

DogsWorld won

**Pet
Resort
.....
Pet
Boarding
.....
Pet
Training**



DogsWorldResort.com | 561-320-9122 | info@DogsWorldResort.com

Press



DogsWorldResort.com | 561-320-9122 | info@DogsWorldResort.com



EDWARD DUGGER + ASSOCIATES, P.A.
Consultants in Architectural Acoustics

ACOUSTICAL MODELING SUMMARY

Date: 25 August 2022

To: Justin Phillips
Owner

DogsWorld, LLC
603 Commerce Way
Jupiter, FL 33458

From: Sam Shroyer, ASA INCE
Edward Dugger, FAIA ASA NCAC INCE

Re: **Barrier Noise Study**
DogsWorld
400 SW 7th Street
Stuart, FL 34994
ED+A 221383

Mr. Phillips,

The following report has been prepared by Edward Dugger + Associates (ED+A) to document the modeled effect of sound level mitigation efforts included in the design of the proposed DogsWorld project at 400 SW 7th Street in Stuart, Florida. ED+A had previously submitted a project memorandum summarizing noise attenuation strategies being considered for the project. This report demonstrates the specific impact of these measures as implemented for this project.

Please contact ED+A with any questions or comments.



SUMMARY

DogsWorld (the Applicant) is proposing the retrofit of an existing office building at 400 SW 7th Street into a dog resort facility providing short- and long-term care and lodging services. The Commercial land use is located within an Urban Center (UC) zoning district and is adjacent to similar uses to its south, east, and west and residential properties to the north, on the opposite side of SW 7th Street..

The proposed design includes two exterior play areas: a 2,300 sq. ft. “Small Dog Park” on the east side of the building and a 6,750 sq. ft. “Large Dog Park” on the west side of the building. Though some noise will inevitably be generated in these areas, dogs are supervised by staff at all times and efforts are made to control, prevent, and limit barking.

Due to the proximity of the proposed facility to existing residential uses, the Applicant has incorporated mitigation measures suggested by ED+A into the design of the facility. This document has been prepared to demonstrate the effect of these measures—as calculated following standardized procedures—on sound levels emanating from the property. Acoustical modeling software was utilized to generate grid noise maps illustrating variations in sound pressure level in the project area.

The attached models illustrate the sound pressure level reduction provided by the proposed exterior barriers and demonstrate compliance with Stuart, Florida Code of Ordinances Article VI. Noise, Section 20-151(a) criteria.

ACOUSTICAL CALCULATIONS AND MODELING

The graphics accompanying this report were generated by the SoundPLAN Essential 5.1 acoustical modeling software, which calculates sound pressure levels over a selected geographical area following the procedures of ISO 9613-2:1996 (ANSI S12.62-2012).

Geographical and building information publicly available via Google Earth and Open Street Maps, respectively—are imported into the model to account for ground elevations and the location and height of existing buildings. The program uses this information to construction a “digital ground model” which serves as the base layer upon which objects (e.g., buildings, barriers), sources and receivers are placed. Google Earth and Open Street Map imagery depicting the project site and surrounding area were loaded into the model along with the site plan. The inclusion and alignment of these images ensures that any objects added to the model—such as exterior sound barriers and sound sources—are located as close to their actual proposed location as possible.

The calculations account for the attenuation of sound as it propagates away from its source to a specified receiving location under meteorological conditions favorable for propagation. This total attenuation provided is cumulative, accounting for attenuation

provided by physical effects including geometrical divergence, absorption of sound by the atmosphere or ground surfaces, reflection of sound from solid surfaces, and screening by obstacles such as barriers and buildings. The summation of these contributing factors is subtracted from the sound power levels of the source(s) of interest included in the model in the form of a grid, with a predetermined distance between the individual points of the grid at a specified height above ground.

Sound power level and frequency spectrum data published by the Association of German Engineers (VDI) in the VDI 3770 standard and included in SoundPLAN Essential 5.1's database were utilized. The dataset provides varying sound power levels and adjustments for different sound source(s) and activities, such as that produced by a single dog or during socialization and training. The greatest sound power level included in the published data—111 dB—was used and the specific conditions or activities were not considered.

Following the standard methods described previously, the software calculated sound levels in the area surrounding the proposed facility with and without the effects of exterior barriers, including a 10 ft concrete wall surrounding the Large Dog Park on the west side of the property and an 8 ft vinyl wall surrounding the Small Dog Park on the east side of the property. Sound levels were also calculated with 6 ft barriers around the perimeter of both dog parks to illustrate the differences in reduction provided by varying wall heights. The cumulative impact of five sources in each area was modeled to simulate “worst-case” sound level conditions.

The results of these calculations are illustrated in the attached grid noise maps, which depict variations in sound level produced by the source(s) in 4 dB increments as represented by color-coded contour areas.

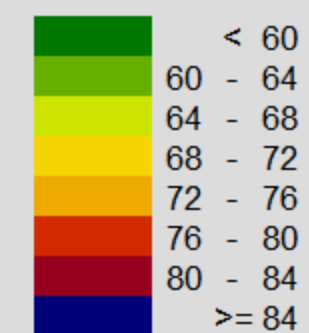
DogsWorld

5 dogs in Large Dog Park
5 dogs in Small Dog Park
No exterior barriers

Signs and symbols



Sound Pressure Levels [dB]



1 : 1264



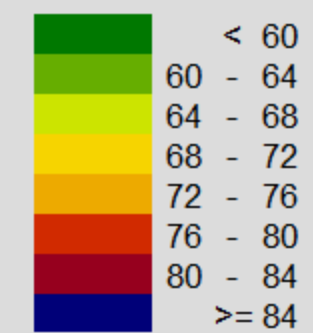
DogsWorld

5 dogs in Large Dog Park
5 dogs in Small Dog Park
6 ft barriers

Signs and symbols

- Wall
- ▨ Building
- * Source

Sound Pressure Levels [dB]



1 : 1264

0 5 10 20 30 40 m

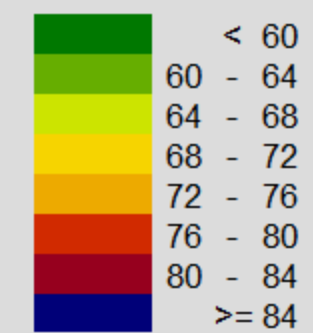
DogsWorld

5 dogs in Large Dog Park
5 dogs in Small Dog Park
10 ft barrier (Large Dog Park)
8 ft barrier (Small Dog Park)

Signs and symbols

- Wall
- ▨ Building
- * Source

Sound Pressure Levels [dB]



1 : 1264



CITY OF STUART, FLORIDA
CITY COMMISSION
STAFF REPORT

MEETING DATE: September 6, 2022

PREPARED BY: Bonnie C. Landry, AICP, Planning Consultant

TITLE OF ITEM: RESOLUTION NUMBER 73-2022: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, CONSIDERING A MAJOR URBAN CODE CONDITIONAL USE APPROVAL TO JUSTIN PHILLIPS, (CONTRACT PURCHASER) FOR THE PROPERTY LOCATED AT 400 SW 7TH STREET, CONSISTING OF APPROXIMATELY 1.62 ACRES; TO ALLOW THE USE OF KENNELS FOR DOGSWORLD; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR A TIMETABLE OF DEVELOPMENT; PROVIDING FOR CONDITIONS OF APPROVAL; AND FOR OTHER PURPOSES.

SUMMARY EXPLANATION/BACKGROUND INFORMATION:

On June 20, 2022, DogsWorld, an established business in Jupiter, applied for a Major Conditional Use to develop another location for its dog daycare and boarding services at 400 SW 7th Street on a 1.62-acre parcel of land

DogsWorld is currently zoned B-3 Business Restricted district in the Urban Code District within the city of Stuart Community Redevelopment Area and has a Future Land Use Designation of Commercial. The subject property is located at 400 SW 7th Street and is within the jurisdictional boundaries of the City of Stuart. Kennels are not listed as a permitted use in the B-3 zoning district, however, the applicant has the ability to request relief from this through the Urban Conditional Use process.

Pursuant to Section 3.01.06.2, *Major Urban Code Conditional Use* of the City's Land Development Code (LDC), applicant can request relief from the Urban Code regulations including uses not contemplated in the LDC.

The subject site is a fully developed property with a vacant building and parking formerly occupied by Construction Journal.

DogsWorld, located in Jupiter, plans to expand its business to provide these same services of dog lodging, dog Daycare and basic grooming in Stuart. The applicant stated that the subject site (1.62 acres) and building (12,360 SF) will provide ample space for their lodging, indoor play, basic grooming, and offices. The building is surrounded by retail, office, and residential uses. The property is part of the Royal Palm 5 Condo association, and the applicant stated that the reuse of this building to DogsWorld will require minimal improvement. Changes proposed to the building include:

Exterior:

1. Proposed small dog park on East side of building comprising of approximately 2,300 SF. This park will have a 6' high white PVC fence
2. Proposed Large dog park on West side of the building comprising of approximately 6,750 SF. This park will have a 6' high concrete block wall and PVC fence.
3. ADA Parking spots will be relocated to the North Side of the building. There will be three 12' wide parking spots across the street from the main entrance to the building. The far left and middle ADA parking spots will have a 5' wide walking area in between and another 4' wide walking area on the east side next to the crosswalk.

Interior:

1. Addition of three interior play areas made from Mason Company's mobile daycare room dividers. Two of the play areas will each consist of approximately 1,200 SF and the third will be approximately 650 SF.

DogsWorld held a neighborhood meeting on May 18th, 2022, with their potential new neighbors. Their goal was to explain what DogsWorld's plan including the planned operation and address any concerns the neighboring community might have. At the meeting, there were 4 main concerns that the neighborhood expressed - Traffic, Noise, Odor, and Hours of Operation.

The application provided detailed information of their operations (attached) which discusses how they plan to address noise, odors, guest supervision and hours of operation.

Noise:

A noise study was conducted (attached) which specifies Db levels are within the ranges specified with Sec. 20-151. – Sound Regulation, specifically, less than 80 decibels from 8:00 a.m. until 10:00 p.m. and less than 60 from 10:00 p.m. until 8:00 a.m.. The operations plan states that there will be no outdoor activity in the evenings therefore, this application tentatively complies with City of Stuart Code. The application states that in

order to reduce offsite noise, DogsWorld will limit the number of dogs outside at one time to 15 or less monitored by specially trained staff to correct and excessive barking. However, the Noise Study provided is based upon 5 dogs in the Large Dog Park and 5 dogs in the Small Dog Park. As a condition of approval, the applicant will limit outdoor activity to be consistent with the Noise Study to limit the total of outside at one time to 10 dogs (5 in the Large Dog Park and 5 in the Small Dog Park).

Odors:

The application includes a description of how staff will manage solid waste with bagging waste and regularly emptying dog waste receptacles, relocating the waste to the dumpster nightly and removed regularly through scheduled garbage pick-up. The site also includes a twice daily disinfecting and deodorizing process to remove all stains and odors using a Wysiwash system further described in the attachments to this agenda item.

Guest Supervision:

The applicant states that the site has 24-hour surveillance cameras, but no overnight staff.

Hours of Operation:

DogsWorld plans to operate Monday through Friday from 7 a.m. until 7 p.m. They walk the dogs at 7:30 am and 5:30 pm. Playtime is conducted rotating schedules of inside and outside play from 9 a.m. - 11 a.m. and 1 p.m. - 4 p.m. The dogs who are lodging are inside their rooms overnight. Daycare dogs Monday through Friday will be in the outdoor areas between 7:30 a.m. to 6 p.m. On weekends, the outdoor areas are occupied between 8 a.m. and 3 p.m. Those staying overnight will be taken outside for a break from 7 p.m. until 8 p.m. and then settled into their indoor rooms for the evening.

Parking:

The project site includes 72 existing parking spaces. Pursuant to the City's Urban Code parking requirements, the office use requires 13 spaces (1 space for 350 square feet office use) and 15 spaces for the kennel use (1 space per 1,000 square feet plus 8 spaces for employees) for a total of 28 spaces; therefore, a surplus of 44. Therefore, the proposal meets the City's requirements for provision of parking.

Traffic:

No traffic statement was provided. The project is located in the CRA, and as such is exempt from traffic concurrency according to *Sec. 4.04.01. – Properties within the traffic concurrency exception area*. This project is exempt as this project is consistent with the city's community redevelopment plan and does not require a major development Plan or planned unit development.

COMPLIANCE WITH SEC. 3.01.06. – URBAN CODE CONDITIONAL USE REQUIREMENTS

City staff has reviewed this Application and has determined that the subject Application has proved to be in substantial compliance with the Urban Code Conditional Use Requirements set forth in Section 3.01.06 of the City's Land Development Code. The Applicant has demonstrated that there will be no negative impacts from the proposed Conditional Use on the subject property. Furthermore, City staff recommends approval of this request, with conditions, based upon the business operations provided in the application which were implemented to address potential offsite impacts of noise and odor.

RECOMMENDATION:

Approve an Urban Code Conditional Use to allow DogsWorld with conditions set forth in Resolution 73-2022.

SEE ATTACHED DOCUMENTS

- Resolution No. 73-2022 with Exhibits

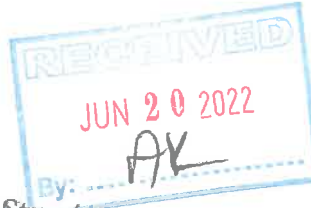
Staff Analysis: The Applicant has worked directly with staff to address the potential of offsite impacts, specifically those of noise and odor. The application and project narrative included their procedures for solid waste disposal and methods they use to sanitize the outdoor dog parks in the application. The applicant also included attenuation strategies in the site plan in efforts to mitigate the potential of noise outside of the project area. The Barrier Noise study demonstrates that the noise complies with the City's noise ordinance, Sec. 20-151. – Sound Regulation. It is important to note that the study was conducted for 10 dogs in the outdoor areas at a time, whereas the project narrative states that they "limit the number of dogs outside at one time". As a condition of approval, the number of dogs in the outside area will be limited to 10 dogs at a time (5 dogs in the Large Dog Park and 5 dogs in the Small Dog Park).

SEE ATTACHED DOCUMENTS

- Resolution No. 73-2022 with Exhibits



City of Stuart
121 SW Flagler Ave.
Stuart, FL 34994
development@ci.stuart.fl.us
(772) 288-5326



Received by:

Reviewed by:

Urban Code Conditional Use Application

Project ID# Z22060003
(Staff Entry)

Pre-App Conference Date:	Application Date:
--------------------------	-------------------

SITE INFORMATION

Project Name: DogsWorld	Parcel ID#: 05-98-41432-000-00010-0
Site Address: 400 SW 7th St, Stuart FL 34994	
Subdivision: 30300 Fed Hwy S of Roosevelt Bridge	Lot(s): JAY 1 R/F/C COMMERCIAL CONDO PER DOC IN OR 2489/1298 CONSISTING OF 70,814 SF LAND W/1 STY OFFICE BLDG
Site Acreage: 1.8211	Flood Zone/Base Flood Elevation: x
Current Zoning District / CRA Subdistrict (if applicable): Urban District/ Urban Center	
Current Comprehensive Plan Future Land Use Designation: Downtown Redevelopment	
Existing Land Use: 1700 - 1700 Office big non-profitatory	Proposed Land Use: Marine
Proposed Square Footage (if applicable):	Proposed Density (if applicable):

PETITIONER INFORMATION

Property Owner: 400 SW 7th Street partners LTD	Phone Number / Email Address: Rich@267lucy.com
Property Owner's Mailing Address: 400 SW 7th St, Stuart FL 34994	
Applicant (if not Owner): Justin Phillips	Phone Number / Email Address: jphillips@stuartfl.gov / jphillips@gmail.com
Applicant's Mailing Address: 800 Commerce Way West, Jupiter 33475	
Agent/Contact Person: James McKinney	Phone Number / Email Address: 772-349-3414/jamesmckinney@nelisouthcoast.com
Agent's Mailing Address: 100 SW Albany Ave, Stuart FL 34984	
Architect:	Engineer:
Planner:	Landscape Architect:

City of Stuart Development Department, 121 SW Flagler Ave. Stuart, FL 34994 Phone: (772) 288-5326 Fax: (772) 288-5388

Statement of Ownership and Designation of Authorized Agent
(Please Print or Type)

Before me, the undersigned authority, personally appeared Rich Goldman

Who, being by me first duly sworn, on oath deposed and says:

1. That he/she is the fee simple title owner of the property described in the attached Legal Description.
2. That he/she is requesting approval of a Kennel in the City of Stuart, FL.
3. That he/she has appointed James McKinney/Jeff Allman to act as an authorized agent on his/her behalf to accomplish the above project.

Name of Owner: 400 SW 7th Street Partners LTD

Signature of Owner:
Rich Goldman
400 SW 7th St.

Street Address

P.O. Box

Telephone Number

Rich@257tech.com

Email Address:

Rich Goldman/Owner

By: Name/Title

Stuart Florida 34994

City State, Zip Code

Stuart FL, 34994

City, State, Zip Code

Fax Number

STATE OF FLORIDA, COUNTY OF Martin

Sworn and subscribed before me by means of ☒ physical presence or ☐ online notarization, this

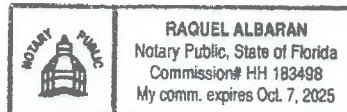
4 day of April, 2022 By Rich Goldman

Personally Known OR Produced Identification
Type of Identification Produced: FLOL

Raquel Albaran
Notary Public

My Commission expires:

10/07/2025



City of Stuart Development Department, 121 SW Flagler Ave. Stuart, FL 34994 Phone: (772) 288-5326 Fax: (772) 288-5388

Financial Responsibility Form

(Please Print or Type)

The Undersigned, as the Property Owner, Lessee, Contract Purchaser, or Applicant (circle one), acknowledges responsibility for all City expenses associated with the referenced application (s) including time spent by the City's consultants and further acknowledges that payment of consultant fees will be made prior to the receipt of the consultant comments.

Name: Justin Phillips
Title: Owner
Company: DogsWorld
Company Address: 603 Commerce Way West

City/State/Zip Code: Jupiter FL 33458
Telephone Number: 917-570-4054
Facsimile Number:
Email Address (optional): jfpillips@gmail.com

I hereby certify that all information contained herein is true and correct.

1. Signed this 4th day of March, 2022.

DocuSigned by:
Justin Phillips
Signature of Property Owner, Lessee, Contract Purchaser or Applicant (circle one)

Application Requirements

Fee:

- \$1,598.00 – Major Urban Code Conditional Use Permit (Community Redevelopment Board and City Commission Approval)
- \$532.00 – Minor Urban Code Conditional Use Permit (Community Redevelopment Board)

Amendment of Conditions attached to Major UCCU (City Commission)

(This does not include fees that may be charged as a result of application reviews by the City's consultants or any required recording fees)

- A Minor Urban Code Conditional Use Permit shall be required for relief from the following regulations of the urban code; paint colors; public art, and architectural materials.
- A Major Urban Code Conditional Use Permit shall be required for relief from the following regulations of the urban code; density, permitted uses, setbacks, location of parking, location of buildings and structures, conflicts with utilities, curb cuts, historic buildings, pitched roofs in the old downtown district, number of stories, building height not to exceed 45 feet, parking located within a building envelope, location of a formula business, and architectural requirements.

Submittal Requirements: A completed application form, one (1) copy of all documents on a PDF formatted disc electronically signed and sealed, the payment of fees, and pertinent information per application type as determined by the Development Director.

Approving Authority: The Development Director is required to prepare a staff report and recommendation concerning this application for the Community Redevelopment Board (CRB) public hearing (if required) followed by a recommendation to the City Commission.

Justification: Please provide justification supporting the request for an Urban Code Conditional Use Permit (include additional pages if needed).

DogsWorld, Jupiter's finest luxury Pet Resort is very pleased to be expanding into, and bringing our award winning Dog Lodging, Doggie Daycare and Basic Grooming services to Stuart. DogsWorld was voted the Best Pet Resort of Palm Beach County by The Palm Beach Post, again in 2022 because we offer the most fun and fulfillment in the healthiest and safest environment for dogs when mom and dad are at work or away from home. Or as we like to say: DogsWorld- An Entire World Devoted to Your Dog! This location is perfectly suited to do so. The building will amply house all of our lodging, indoor play operations, basic grooming as well as offices and staff. We will provide an outdoor dog park area on the West side of the building with artificial turf and surrounded by opaque, seven foot vinyl fencing. At all times, but specifically while outdoors, dogs will be supervised by our highly trained staff who will prevent any excessive noise.

(over)

Dear Ms. Landry,

Thank you for providing us with your PowerPoint presentation, we greatly appreciate it. In your presentation you make three recommendations to mitigate concerns. First, that we screen in the dog park areas with six-foot opaque fencing. Second, that use of the outdoor dog park areas be limited to between the hours 6:00a.m. and 8:00 p.m. Third, that the number of dogs in the outside areas be limited to a total of 10 dogs at any one time (5 dogs in each of the two outdoor play areas). We agree completely that the first two conditions are prudent and in line with our responsibility and desire to be respectful of our residential neighbors. However, we respectfully submit that the third condition is unnecessary from a noise mitigation standpoint and unduly restrictive to our business operations.

Limiting our play groups to just 5 dogs while outdoors would greatly hinder the ability of our business to function effectively and profitably and to provide the high-quality services our customers desire and have come to greatly appreciate at our other location. Putting such a restriction on our business would force us either to put such drastic caps on the number of dogs we accept daily so as to make it impossible to run the business profitably or force us to deal with conditions indoors that would be extremely difficult to manage and severely affect our ability to provide safe, sanitary conditions inside the facility. Furthermore, our clients choose us in part because of our expertise in providing fun, safe, stimulating social play for their dogs. My over 20 years in the industry has taught me that this is best accomplished with playgroups between 10-15 dogs at a time. Smaller playgroups are less stimulating and less effective at delivering the level of play that all dogs require to be happy and healthy and our clients' demand. Larger playgroups are undesirable for different reasons, but the fact remains that 10-15 dogs in a playgroup is the "sweet spot" for providing a safe, active and mentally and physically stimulating experience for both dogs and staff.

In regard to noise mitigation, we included the 5-dog study to illustrate a kind of barking "worst case scenario". The study records the noise of five dogs barking simultaneously, thus it would be easy to assume that allowing up to 15 dogs in a group would be 3Xs as loud. However, for many reasons, this is just not the case. First of all, even if left completely unattended, something I would never allow at DogsWorld, at no point would 15 dogs be barking simultaneously. At most 5 out of the 15 might be doing so, if that many. Some dogs would be lying down, some would be exploring and sniffing, some would be engaged in play, some would be hanging back and just watching the others. What certainly wouldn't be occurring is a chorus of 15 dogs simultaneously barking at the top of their lungs. Therefore, the worst-case barking scenario included in the noise study is simply a condition that never occurs at DogsWorld.

Furthermore, you will of course remember from our submission that our staff is highly trained. They receive three weeks of training including dozens of hours of practical training as well 20+ hours of nationally recognized online certification through The Professional Pet Boarding Certification Council. They know how to keep the dogs engaged in play that keeps them at a proper level of stimulation. Dogs engaged in healthy play do not bark excessively or persistently, dogs that are bored or overstimulated do. The staff are taught specific techniques to redirect and mitigate excessive barking from the dogs they supervise, and they take this responsibility seriously. Any excessive barking is quickly dealt with by our staff. At no point during the regular course of operations at our other location are 15 dogs barking simultaneously while outdoors. In fact, at no point are even 5 dogs barking simultaneously. In a well supervised play group of 15 dogs you would not regularly hear more than 2-3 dogs barking

simultaneously and then only for a few seconds at a time before a staff member would redirect them towards a more desirable (quiet) behavior.

In addition, let me humbly submit to you that I personally have 20 years of experience working professionally with dogs in many roles. Most importantly, I trained dogs professionally for 5 years and have owned a successful pet resort for almost 7 years. I can personally attest that the concern over noise emanating from allowing my company to operate with 15 dogs or fewer at a time in the outdoor dog parks, while understandable to a lay person without the complete picture, is not warranted given all the information I have provided regarding my expertise, the way my business operates and the wealth of data I have provided to back that assertion up.

For all of the above reasons, I respectfully submit to you that DogsWorld be approved with a reasonable condition of: The number of dogs in the outside areas be limited to a total of 30 dogs at any one time (15 in the Large Dog Park and 15 in the Small Dog Park).

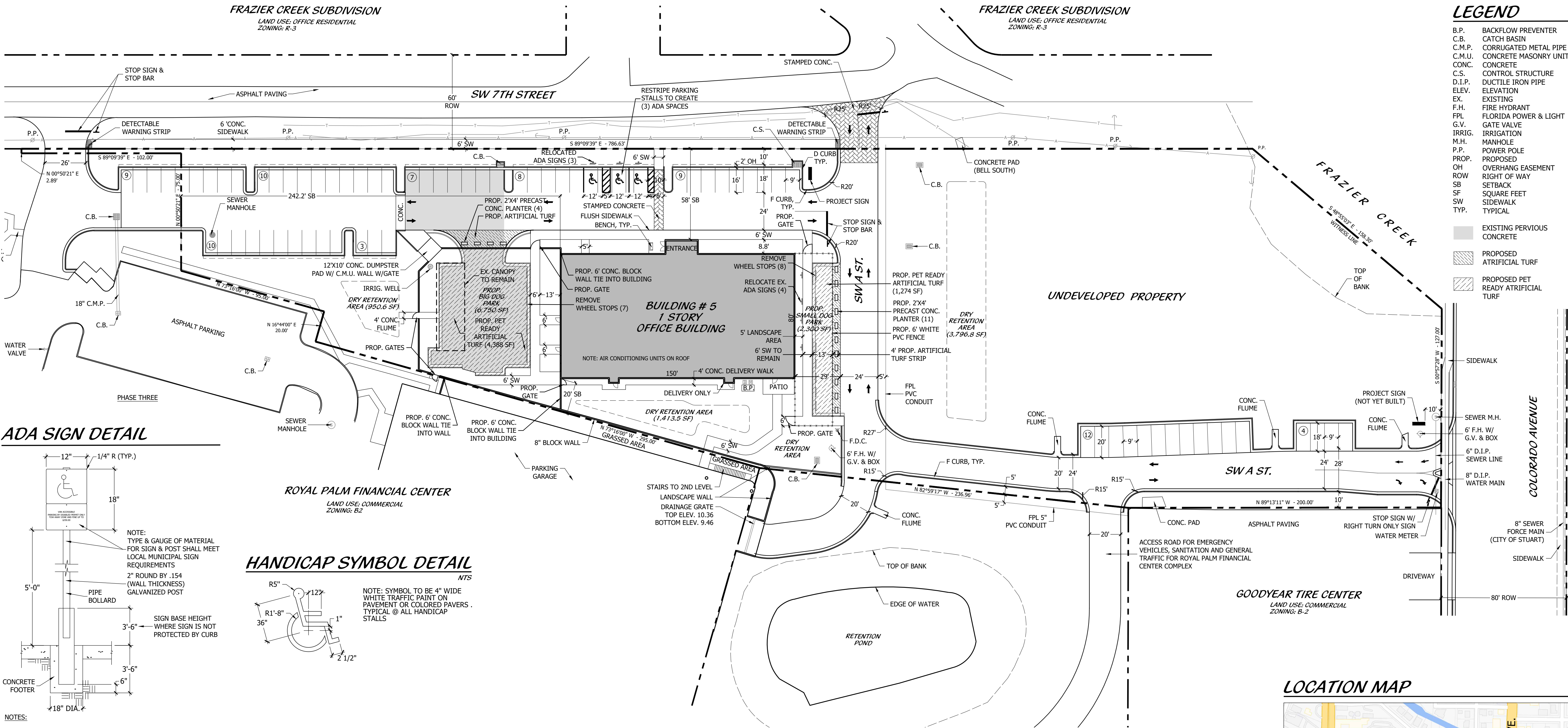
Thank you in advance for taking the time to hear and consider my application.

Sincerely,

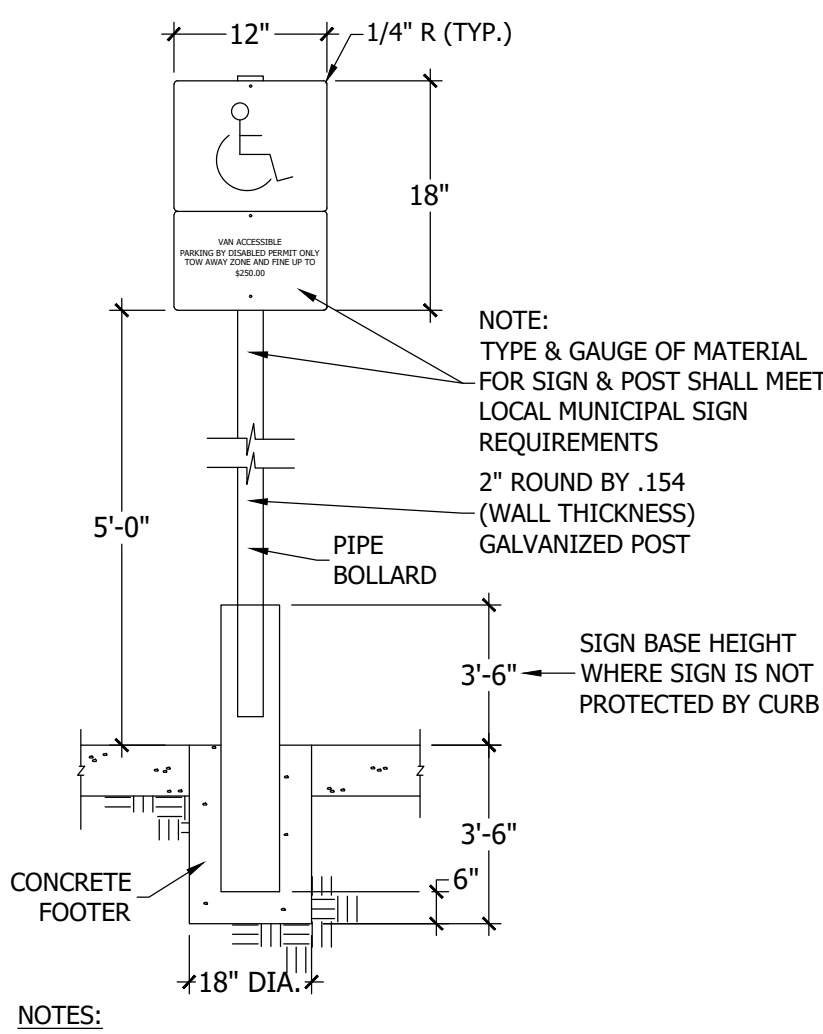
Justin Phillips

Owner

DogsWorld Canine Resort



ADA SIGN DETAIL

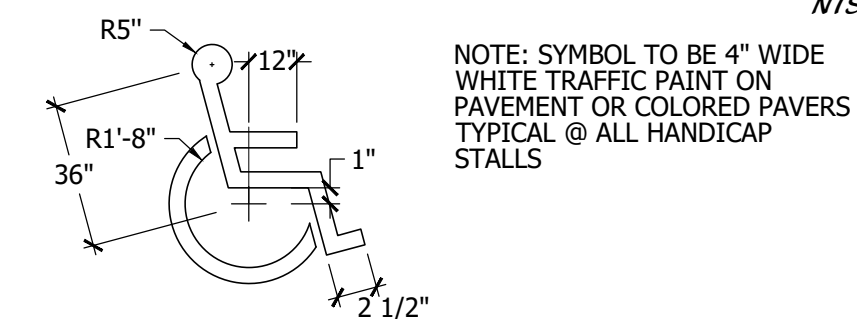


NOTES:

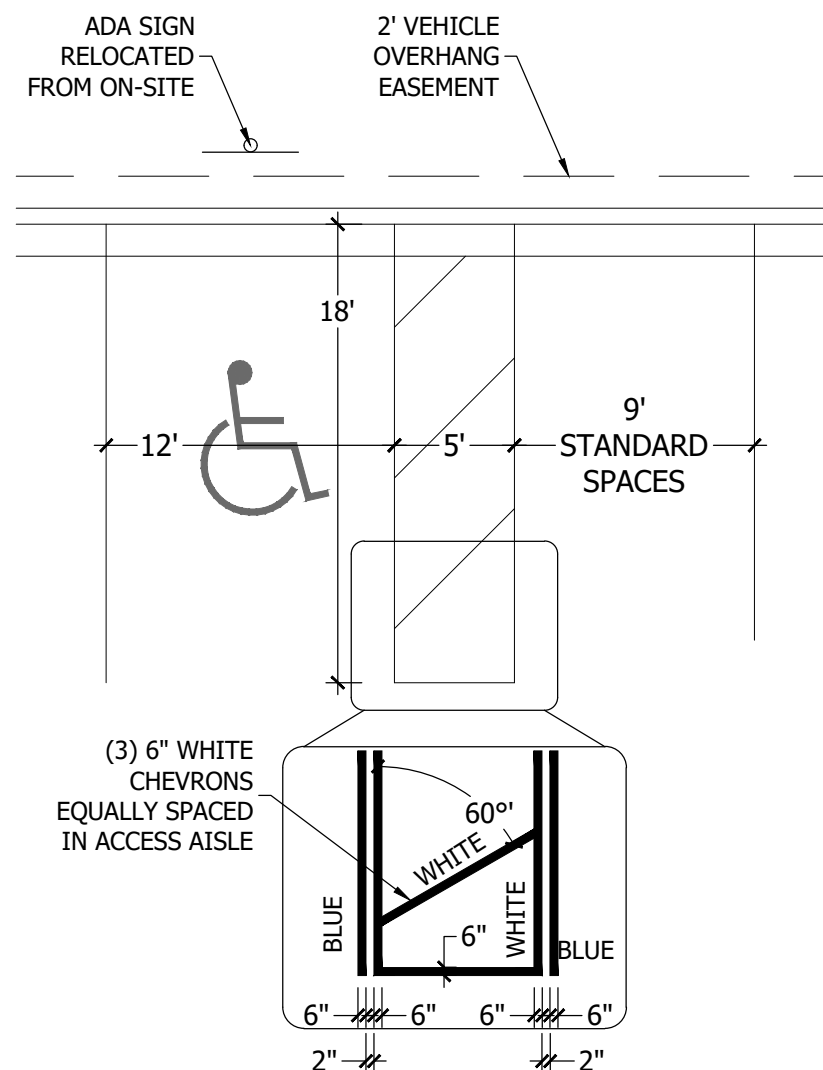
NOTE ON SIGN STATING 'VAN ACCESSIBLE, PARKING BY DISABLED PERMIT ONLY, TOW AWAY ZONE AND FINE UP TO \$250

CONTRACTOR SHALL VERIFY ALL THE REQUIRED INFORMATION NECESSARY AT EACH SIGN WITH LOCAL AUTHORITIES PRIOR TO PURCHASING.

HANDICAP SYMBOL DETAIL



ADA PARKING DETAIL



SITE DATA

SITE DATA		
PARCEL ID	05-38-41-032-000-00010-0	
ADDRESS	400 SW 7TH ST.	
TOTAL SITE AREA	3.32 AC.	144,619 SQ. FT.
ZONING DISTRICT	B-3: BUSINESS	
LAND USE	COMMERCIAL	
PROPOSED USE(S)	OFFICE, DOG KENNEL	
BUILDING AREA	11,351	SQ. FT.
	OFFICE USE	4,396
	(INC. OFFICE, BREAK, BATHROOM, LAUNDRY, KITCHEN, LOBBY, CONFERENCE, RESTROOMS, STORAGE AREAS)	
KENNEL/DOG SUITE AREAS	6,955	
TOTAL GROSS FLOOR AREA	11,351	SQ. FT.
NUMBER OF STORIES	1	
BUILDING SETBACKS		
FRONT		20'
SIDE (MIN)		242.2'
REAR (MIN)		58'
PARKING CALCULATIONS		
OFFICE USE (1 SPACE PER 300 SQ. FT. OF OFFICE)	15	
STORAGE AREA		
KENNEL USE (1 SPACE PER 1,000 SQ.FT. + 8 SPACES FOR EMPLOYEES)	15	
	30	72
ADA ACCESSIBLE PARKING (INC. IN TOTAL)		3
PROPOSE DOG PARKS		
PROPOSED SMALL DOG PARK	2,300	SQ. FT.
PROPOSED BIG DOG PARK	6,750	SQ. FT.

SITE AREAS		
IMPERVIOUS AREAS		
BUILDING AREA	11,351 SQ. FT.	7.85%
VEHICULAR AREA (INCLUDING DUMPSTER AREA)*	37,014.58 SQ. FT.	25.59%
HARDSCAPE AREA (INCLUDES SIDEWALKS, CONCRETE AND PROPOSED ARTIFICIAL TURF)	12,035.24 SQ. FT.	8.32%
SUB-TOTAL IMPERVIOUS	60,400.82 SQ. FT.	41.77%
PERVIOUS AREAS		
RETENTION AND LANDSCAPE AREAS	84,218.18 SQ. FT.	58.23%
SUB-TOTAL PERVIOUS	84,218.18 SQ. FT.	58.23%
TOTAL SITE AREA	144,619.00 SQ. FT.	100.00%
*NOTE: OPEN SPACE ALLOWANCE OF 50% FOR PARKING AREAS WHICH IS CONSTRUCTED OF PERVIOUS CONCRETE RESULTS IN THE FOLLOWING:		
EXISTING PERVIOUS CONCRETE =	13,488 SQ. FT.	
13,488 X 50% =	6,724 SQ. FT.	
THEREFORE IMPERVIOUS AREA IS REDUCED BY =	6,724 SQ. FT.	
ADJUSTED TOTAL IMPERVIOUS AREA =	53,677 SQ. FT.	
OPEN SPACE REQUIRED =	50,617 SQ. FT.	35.00%
OPEN SPACE PROVIDED =	84,218.18 SQ. FT.	58.23%

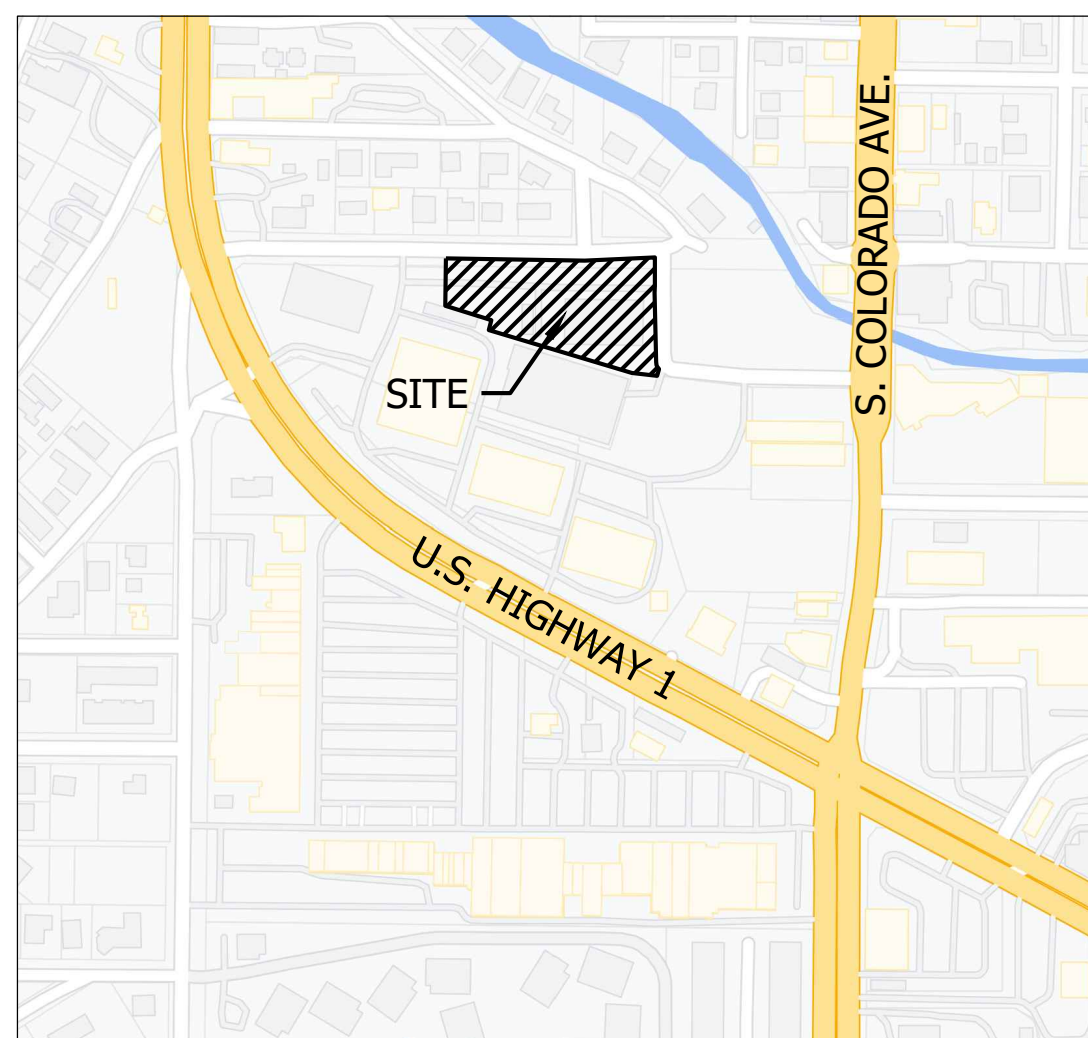
PROJECT TEAM

OWNER/CLIENT:
NAI SOUTHCOST
100 SW ALBANY AVE., SUITE 200
STUART, FL 34994
772.286.6292
CONTACT: NIKOLAUS M. SCHROTH

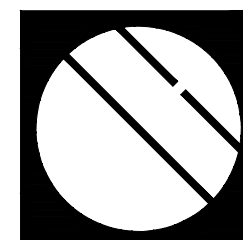
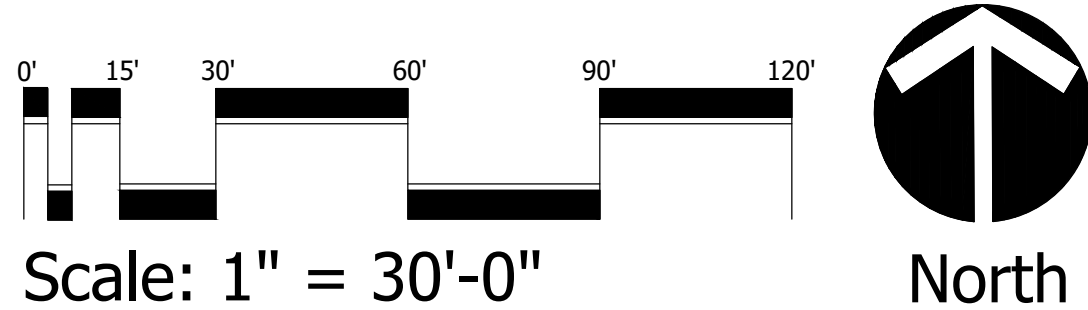
TENANT:
DOGS WORLD, LLC
603 COMMERCE WAY WEST
JUPITER, FL 33458
917.570.4054
CONTACT: JUSTIN PHILLIPS

LANDSCAPE ARCHITECT:
COTLEUR & HEARING, INC.
1934 COMMERCE LANE, SUITE 1
JUPITER, FL 33458
561.747.6336
CONTACT: HEATHER KINKEAD

LOCATION MAP



Site Plan



Cotleur & Hearing

Landscape Architects
Land Planners
Environmental Consultants

1934 Commerce Lane
Suite 1
Jupiter, Florida 33458

www.cotleurhearing.com
Lic# LC-C000239

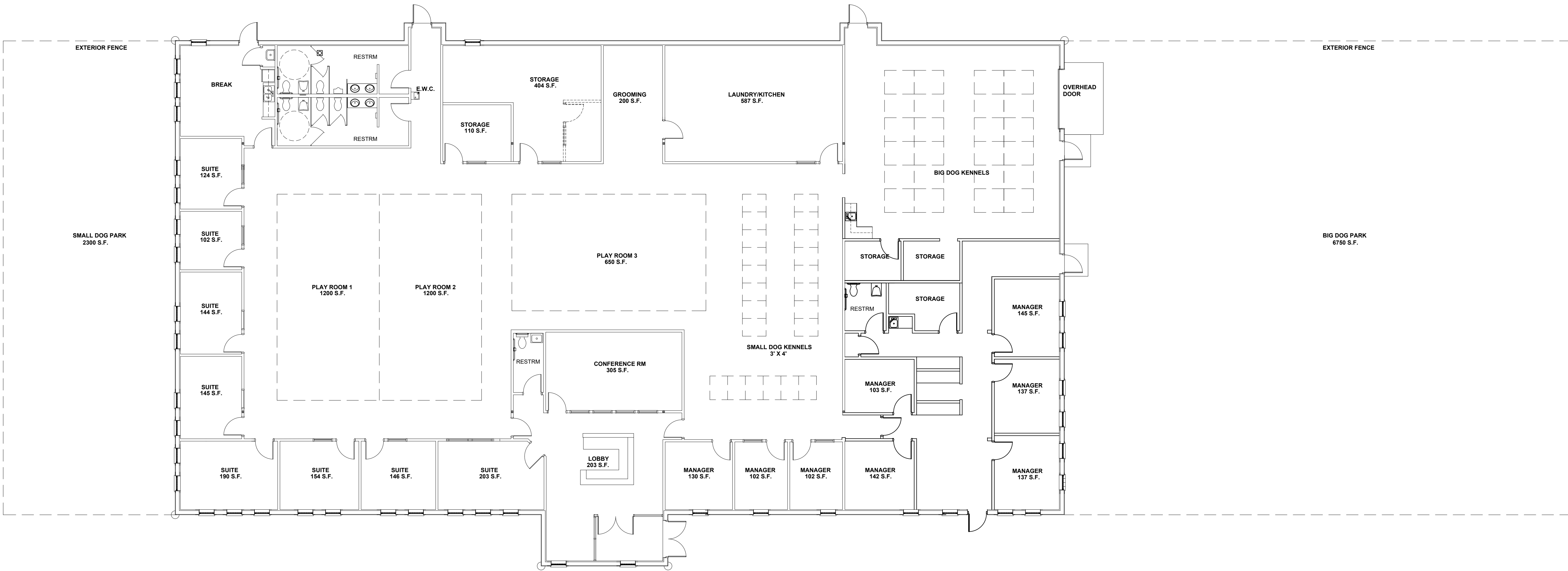
Dog's World Resort
City of Stuart, Florida

DESIGNED: DEH
DRAWN: JS/RO
APPROVED: DEH
JOB NUMBER: 18-1010.03
DATE: 07-29-22
REVISIONS:

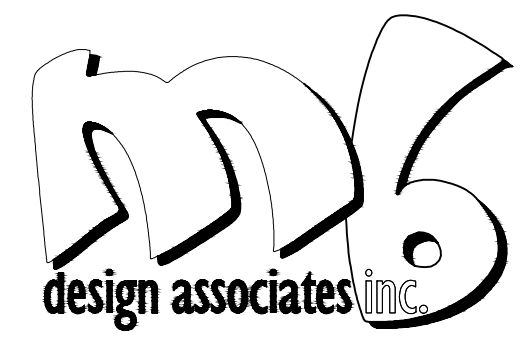
June 29, 2022 8:48:42 a.m.
Drawing: 18-1010.03 SP.DWG

SHEET 1 OF 3

© COTLEUR & HEARING, INC.
These drawings are the property of the architect and are not to be used for extensions or on other projects except by agreement in writing with the architect. Immediately report any discrepancies to the architect.



PROPOSED FLOOR PLAN
NOT TO SCALE



MB DESIGN ASSOCIATES, INC.
FLORIDA LICENSE #: AR0014756

P.O. Box 4376
Tequesta, Florida 33469
phone: (561) 222-2993
email: jill@mbdarch.com

WILLIAM TRACY, #AR0014756

DATE:

THE FOLLOWING CODES WERE USED IN THE DESIGN OF THIS PROJECT:

2020 FLORIDA BUILDING CODE, 7TH EDITION
EXISTING BUILDING, BUILDING, PLUMBING, FUEL GAS, MECHANICAL, TEST PROTOCOLS FOR HIGH VELOCITY HURRICANE ZONES, ACCESSIBILITY AND ENERGY

2017 NATIONAL ELECTRICAL CODE NFPA 70A

FLORIDA FIRE PREVENTION CODE, 7TH EDITION (INCLUDING NFPA 1 AND 101, 2018 EDITION) WITH FLORIDA AMENDMENTS

PROJECT NAME/LOCATION:

DOGS WORLD
400 S.W. 7TH STREET
STUART, FL

I (WE) HAVE REVIEWED THESE DRAWINGS, UNDERSTAND THE WORK OUTLINED THEREON, AND HEREBY APPROVE SAME FOR CONSTRUCTION.

BY:

DATE:

THESE DRAWINGS ARE BASED ON EXISTING DRAWINGS WHEN AVAILABLE. FIELD INSPECTION OF AS BUILT CONDITIONS AND OTHER INFORMATION FROM THE BUILDING OWNER, MAINTENANCE DEPARTMENT AND AS NOTED. INFORMATION WAS GATHERED WITHOUT "DESTRUCTIVE INVESTIGATION" (CUTTING INTO EXISTING SURFACES TO REVEAL STRUCTURE, PIPING, DUCTWORK, ETC). CONTRACTORS AND SUBCONTRACTORS ARE TO BASE BIDS ON INFORMATION SHOWN. SHOULD CONSTRUCTION REVEAL THAT EXISTING CONDITIONS ARE NOT AS ANTICIPATED OR AS SHOWN ON THESE DRAWINGS THE CONTRACTOR AND/OR SUBCONTRACTORS WILL NOTIFY THE OWNER/TENANT OF THE DIFFERENCE AND THE PRICE WILL BE ADJUSTED UP OR DOWN TO REFLECT THE DISCREPANCY.

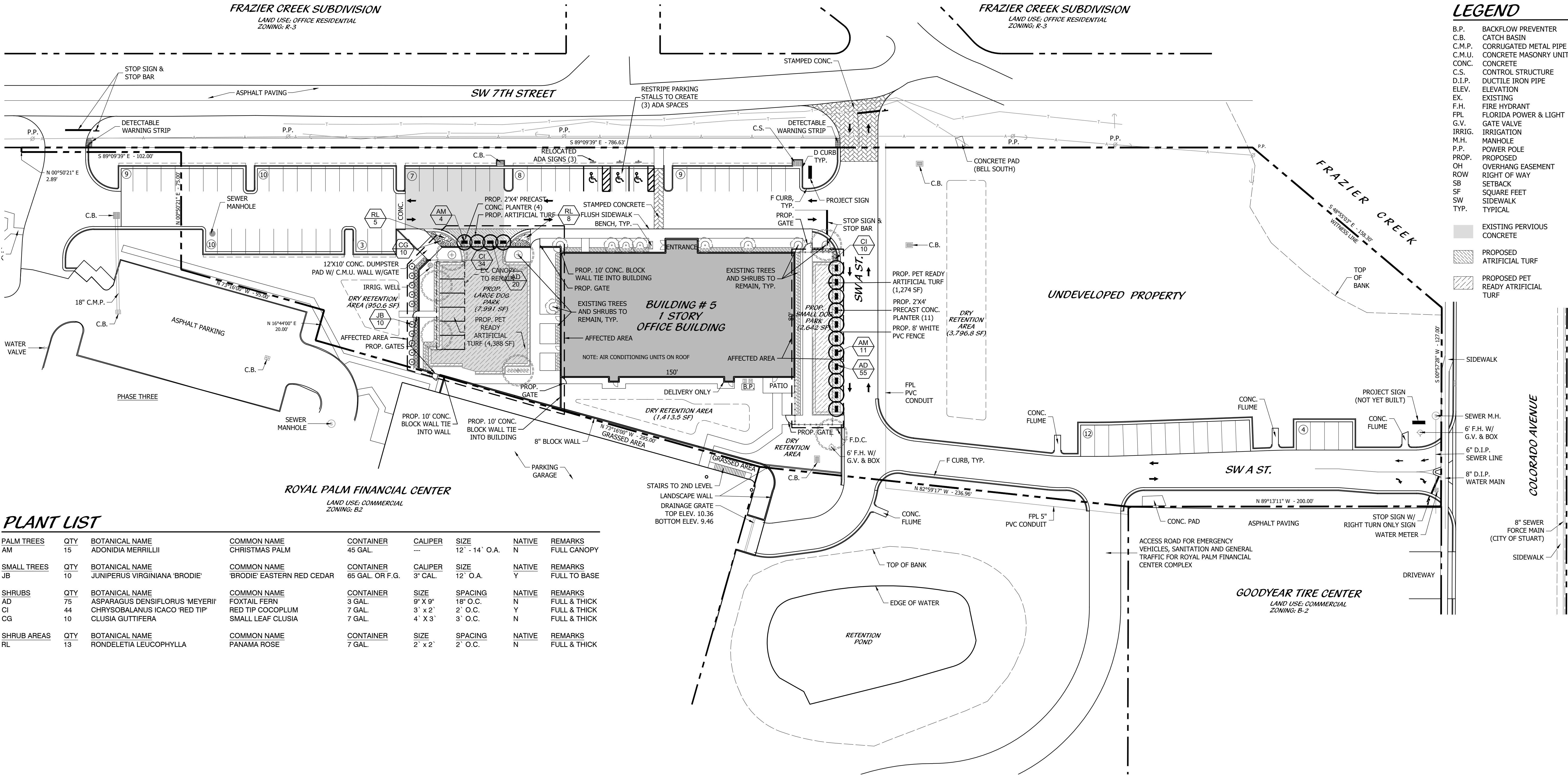
JOB #: DOGS WORLD - STUART
DATE: 6-15-2022
SCALE: VARIES
DRAWN BY: JM

ISSUED:	REVISIONS:

SHEET NO:

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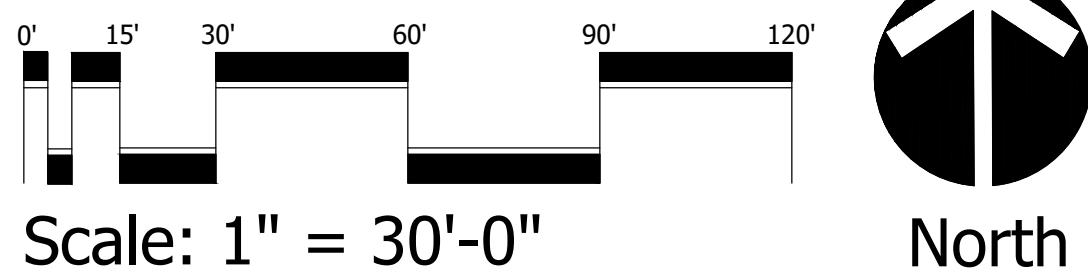
OF 1



PLANT LIST

PALM TREES		QTY	BOTANICAL NAME	COMMON NAME	CONTAINER	CALIPER	SIZE	NATIVE	REMARKS
AM		15	ADONIDIA MERRILLII	CHRISTMAS PALM	45 GAL.	---	12" - 14" O.A.	N	FULL CANOPY
SMALL TREES		QTY	BOTANICAL NAME	COMMON NAME	CONTAINER	CALIPER	SIZE	NATIVE	REMARKS
JB		10	JUNIPERUS VIRGINIANA 'BRODIE'	'BRODIE' EASTERN RED CEDAR	65 GAL. OR F.G.	3" CAL.	12" O.A.	Y	FULL TO BASE
SHRUBS		QTY	BOTANICAL NAME	COMMON NAME	CONTAINER	SIZE	SPACING	NATIVE	REMARKS
AD		75	ASPARAGUS DENSIFLORUS 'MEYERII'	FOXTAIL FERN	3 GAL.	9" X 9"	18" O.C.	N	FULL & THICK
CI		44	CHRYSOBALANUS ICACO 'RED TIP'	RED TIP COCOPLUM	7 GAL.	3" X 2"	2" O.C.	Y	FULL & THICK
CG		10	CLUSIA GUTTIFERA	SMALL LEAF CLUSIA	7 GAL.	4" X 3"	3" O.C.	N	FULL & THICK
SHRUB AREAS		QTY	BOTANICAL NAME	COMMON NAME	CONTAINER	SIZE	SPACING	NATIVE	REMARKS
RL		13	RONDELETIA LEUCOPHYLLA	PANAMA ROSE	7 GAL.	2" X 2"	2" O.C.	N	FULL & THICK

Landscape Plan



Cotleur & Hearing
Landscape Architects
Land Planners
Environmental Consultants
1934 Commerce Lane
Suite 1
Jupiter, Florida 33458
www.cotleurhearing.com
Lic# LC-C000239

Dog's World Resort
Stuart, Florida

DESIGNED	DEH
DRAWN	JS/RO
APPROVED	DEH
JOB NUMBER	18-1010.03
DATE	06-17-22
REVISIONS	

June 17, 2022 8:48:42 a.m.
Drawing: 18-1010.03 SP.DWG

LANDSCAPE SPECIFICATIONS

1. GENERAL LANDSCAPE REQUIREMENTS

LANDSCAPE CONTRACT WORK INCLUDES, BUT IS NOT LIMITED TO, SOIL PREPARATION, FINE OR FINISH GRADING, FURNISHING AND INSTALLING PLANT MATERIAL, WATERING, STAKING, GUYING AND MULCHING.

PLANT SIZE AND QUALITY

TREES, PALMS, SHRUBS, GROUNDCOVERS: PLANT SPECIES AND SIZES SHALL CONFORM TO THOSE INDICATED ON THE DRAWINGS. NOMENCLATURE SHALL CONFORM TO STANDARD PLANT NAMES, 1942 EDITION. ALL NURSERY STOCK SHALL BE IN ACCORDANCE WITH GRADES AND STANDARDS FOR NURSERY PLANTS PARTS I & II, LATEST EDITION PUBLISHED BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, UNLESS SPECIFIED OTHERWISE. ALL PLANTS SHALL BE FLORIDA GRADE NUMBER 1 OR BETTER AS DETERMINED BY THE FLORIDA DIVISION OF PLANT INDUSTRY.

ALL CONTAINER GROWN MATERIAL SHALL BE HEALTHY, VIGOROUS, WELL-ROOTED PLANTS AND ESTABLISHED IN THE CONTAINER IN WHICH THEY ARE SOLD. THE PLANTS SHALL HAVE TOPS OF GOOD QUALITY AND BE IN A HEALTHY GROWING CONDITION.

AN ESTABLISHED CONTAINER GROWN PLANT SHALL BE TRANSPLANTED INTO A CONTAINER AND GROWN IN THAT CONTAINER SUFFICIENTLY LONG ENOUGH FOR THE NEW FIBROUS ROOTS TO HAVE DEVELOPED SO THAT THE ROOT MASS WILL STILL RETAIN ITS SHAPE AND HOLD TOGETHER WHEN REMOVED FROM THE CONTAINER.

STANDARD PLANTING MIXTURE SHALL BE ONE (1) PART RECYCLED ORGANIC MATERIAL ADDED TO THREE (3) PARTS EXISTING NATIVE SOIL.

REPLACEMENT SOIL SHALL BE USED AS SPECIFIED TO REPLACE EXISTING SOILS THAT ARE DETERMINED BY THE LANDSCAPE ARCHITECT TO BE UNSUITABLE FOR PLANTING, I.E. ROAD BASE, PAVEMENT, ETC. REPLACEMENT SOIL MIX SHALL CONTAIN 60% SAND AND 40% MUCK. SAND SHALL BE 100% CLEAN NATIVE SAND SCREENED TO 1/4" AND MUCK SHALL BE 100% CLEAN ORGANIC NATIVE MUCK SCREENED TO 1/2". ALL SOIL SHALL BE MIXED PRIOR TO DELIVERY ON SITE.

MULCH SHALL BE SHREDDED MELALEUCA, EUCALYPTUS OR GRADE "A" RECYCLED. ALL MULCH IS TO BE APPLIED TO A DEPTH OF 3", EXCEPT AS OTHERWISE NOTED.

FERTILIZER IN BACKFILL MIXTURE FOR ALL PLANTS SHALL CONSIST OF MILORGANITE ACTIVATED SLUDGE MIXED WITH THE BACKFILL AT A RATE OF NOT LESS THAN 50 LBS. PER CUBIC YARD.

FERTILIZER FOR TREES AND SHRUBS MAY BE TABLET FORM OR GRANULAR. GRANULAR FERTILIZER SHALL BE UNIFORM IN COMPOSITION, DRY AND FREE-FLOWING. THIS FERTILIZER SHALL BE DELIVERED TO THE SITE IN THE ORIGINAL UNOPENED BAGS, EACH BEARING THE MANUFACTURER'S STATEMENT OF ANALYSIS, AND SHALL MEET THE FOLLOWING REQUIREMENTS: 16% NITROGEN, 7% PHOSPHORUS, 12% POTASSIUM, PLUS IRON. TABLET FERTILIZER (AGRICIFORM OR EQUAL) IN 21 GRAM SIZE SHALL MEET THE FOLLOWING REQUIREMENTS: 20% NITROGEN, 10% PHOSPHORUS AND 5% POTASSIUM.

FERTILIZER WILL BE APPLIED AT THE FOLLOWING RATES:

PLANT SIZE	16-7-12	AGRIFORM TABLETS (21 GRAM)
1 GAL.	1/4 LB.	1
3 GAL.	1/3 LB.	3
7-15 GAL.	1/2 LB.	6
1"-6" CALIPER	2 LBS./1" CALIPER	2 PER 1" CALIPER
6" AND LARGER	3 LBS./1" CALIPER	2 PER 1" CALIPER

"FLORIDA EAST COAST PALM SPECIAL" SHALL BE APPLIED TO ALL PALMS AT INSTALLATION AT A RATE OF ½ LB. PER INCH OF TRUNK UNLESS OTHERWISE SPECIFIED.

FIELD GROWN TREES AND PALMS PREVIOUSLY ROOT PRUNED SHALL OBTAIN A ROOT BALL WITH SUFFICIENT ROOTS FOR CONTINUED GROWTH WITHOUT RESULTING SHOCK.

CONTRACTOR SHALL NOT MARK OR SCAR TRUNK IN ANY FASHION.

PLANTS SHALL BE WATERED AS NECESSARY OR WITHIN 24 HOURS AFTER NOTIFICATION BY THE LANDSCAPE ARCHITECT.

THE LOCATIONS OF PLANTS, AS SHOWN IN THESE PLANS, ARE APPROXIMATE. THE FINAL LOCATIONS MAY BE ADJUSTED TO ACCOMMODATE UNFORESEEN FIELD CONDITIONS. MAJOR ADJUSTMENTS TO THE LAYOUT ARE TO BE APPROVED BY THE LANDSCAPE ARCHITECT.

ALL PLASTIC FABRIC SHALL BE REMOVED FROM PLANT MATERIAL AT TIME OF INSTALLATION.

ALL TREES MUST BE STAKED AS SHOWN ON THE PLANTING DETAILS WITHIN 24 HOURS OF PLANTING. STAKES TO REMAIN FOR A MINIMUM OF 9 MONTHS BUT NO LONGER THAN 18 MONTHS. CONTRACTOR IS RESPONSIBLE FOR MAINTENANCE AND REMOVAL OF THE STAKES.

ALL TREES MUST BE PRUNED AS PER LANDSCAPE ARCHITECT'S DIRECTION. SABAL PALMS MAY BE HURRICANE CUT.

ALL SHRUBS, TREES AND GROUND COVER WILL HAVE IMPROVED SOIL AS PER PLANTING SOIL NOTES. THE SOILS SHALL BE PLACED IN THE HOLE DURING PLANTING. TOP DRESSING ONLY IS NOT ACCEPTABLE.

DO NOT ALLOW AIR POCKETS TO FORM WHEN BACKFILLING. ALL TREES SHALL BE SPIKED IN UTILIZING WATER AND A TREE BAR.

THE LANDSCAPE CONTRACTOR SHALL WATER, MULCH, WEED, PRUNE, AND OTHERWISE MAINTAIN ALL PLANTS, INCLUDING SOD, UNTIL COMPLETION OF CONTRACT OR ACCEPTANCE BY LANDSCAPE ARCHITECT. SETTLED PLANTS SHALL BE RESET TO PROPER GRADE, PLANTING SAUCERS RESTORED, AND DEFECTIVE WORK CORRECTED.

THE LANDSCAPE CONTRACTOR SHALL AT ALL TIMES KEEP THE PREMISES FREE FROM ACCUMULATION OF WASTE MATERIALS OR DEBRIS CAUSED BY HIS CREW DURING THE PERFORMANCE OF THE WORK. UPON COMPLETION OF THE WORK, THE CONTRACTOR SHALL PROMPTLY REMOVE ALL WASTE MATERIALS, DEBRIS, UNUSED PLANT MATERIAL, EMPTY PLANT CONTAINERS AND ALL EQUIPMENT FROM THE PROJECT SITE.

UPON COMPLETION OF THE WORK, THE LANDSCAPE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT AND REQUEST A FINAL INSPECTION. ANY ITEMS THAT ARE JUDGED INCOMPLETE OR UNACCEPTABLE BY THE LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE SHALL BE CORRECTED BY THE LANDSCAPE CONTRACTOR WITHIN 14 DAYS.

ALL LABOR AND MATERIAL FOR SOIL AMENDMENTS AND FERTILIZER THAT IS REQUIRED TO INSURE THE SUCCESSFUL ESTABLISHMENT AND SURVIVAL OF THE PROPOSED VEGETATION, AS WELL AS ALL THE COST FOR THE REMOVAL OF UNSUITABLE OR EXCESS BACKFILL MATERIAL, SHALL BE INCLUDED IN THE CONTRACTOR'S BID TO PERFORM THE WORK REPRESENTED IN THIS PLAN SET.

2. PLANTING TREES

EXCAVATE PIT AS PER PLANTING DETAILS.

BACKFILL AROUND BALL WITH STANDARD PLANTING MIXTURE AND SLIGHTLY COMPACT, WATER THOROUGHLY AS LAYERS ARE PLACED TO ELIMINATE VOIDS AND AIR POCKETS. BUILD A 6" HIGH BERM OF STANDARD PLANTING MIXTURE BEYOND EDGE OF EXCAVATION. APPLY 3" (AFTER SETTLEMENT) OF MULCH EXCEPT WITHIN 6" OF TRUNK.

PRUNE TREE TO REMOVE DAMAGED BRANCHES, IMPROVE NATURAL SHAPE AND THIN OUT STRUCTURE. DO NOT REMOVE MORE THAN 15% OF BRANCHES. DO NOT PRUNE BACK TERMINAL LEADER.

GUY AND STAKE TREE IN ACCORDANCE WIT THE STAKING DETAILS IMMEDIATELY AFTER PLANTING.

3. PLANTING SHRUBS

LAYOUT SHRUBS TO CREATE A CONTINUOUS SMOOTH FRONT LINE AND FILL IN BEHIND.

EXCAVATE PIT OR TRENCH TO 1-1/2 TIMES THE DIAMETER OF THE BALLS OR CONTAINERS OR 1'-0" WIDER THAN THE SPREAD OF ROOTS FOR POSITIONING AT PROPER HEIGHT. BACKFILL AROUND PLANTS WITH STANDARD PLANTING MIXTURE. COMPACT TO ELIMINATE VOIDS AND AIR POCKETS. FORM GRADE SLIGHTLY DISHED AND BERMED AT EDGES OF EXCAVATION. APPLY 3" OF MULCH EXCEPT WITHIN 3" OF STEMS.

PRUNE SHRUBS TO REMOVE DAMAGED BRANCHES, IMPROVE NATURAL SHAPE AND THIN OUT STRUCTURE. DO NOT REMOVE MORE THAN 15% OF BRANCHES.

4. PLANTING GROUND COVER

LOOSEN SUBGRADE TO DEPTH OF 4" IN AREAS WHERE TOPSOIL HAS BEEN STRIPPED AND SPREAD SMOOTH.

SPACE PLANTS AS OTHERWISE INDICATED. DIG HOLES LARGE ENOUGH TO ALLOW SPREADING OF ROOTS. COMPACT BACKFILL TO ELIMINATE VOIDS AND LEAVE GRADE SLIGHTLY DISHED AT EACH PLANT. WATER THOROUGHLY. APPLY 3" OF MULCH OVER ENTIRE PLANTING BED, LIFTING PLANT FOLIAGE ABOVE MULCH.

DURING PERIODS OF HOT SUN AND/OR WIND AT TIME OF PLANTING, PROVIDE PROTECTIVE COVER FOR SEVERAL DAYS OR AS NEEDED.

5. PLANTING LAWNS

SODDING: SOD TYPE SPECIFIED ON PLANT LIST SHALL BE MACHINE STRIPPED NOT MORE THAN 24 HOURS PRIOR TO LAYING.

LOOSEN SUBGRADE TO DEPTH OF 4" AND GRADE WITH TOPSOIL EITHER PROVIDED ON SITE OR IMPORTED STANDARD PLANTING MIX TO FINISH DESIGN ELEVATIONS. ROLL PREPARED LAWN SURFACE. WATER THOROUGHLY, BUT DO NOT CREATE MUDDY SOIL CONDITION.

FERTILIZE SOIL AT THE RATE OF APPROXIMATELY 10 LBS. PER 1,000 S.F. SPREAD FERTILIZER OVER THE AREA TO RECEIVE GRASS BY USING AN APPROVED DISTRIBUTION DEVICE CALIBRATED TO DISTRIBUTE THE APPROPRIATE QUANTITY. DO NOT FERTILIZE WHEN WIND VELOCITY EXCEEDS 15 M.P.H. THOROUGHLY MIX FERTILIZER INTO THE TOP 2" OF TOPSOIL.

LAY SOD STRIPS WITH TIGHT JOINTS, DO NOT OVERLAP, STAGGER STRIPS TO OFFSET JOINTS IN ADJACENT COURSES. WORK SIFTED STANDARD PLANTING MIXTURE INTO MINOR CRACKS BETWEEN PIECES OF SOD AND REMOVE EXCESS SOIL DEPOSITS FROM SODDED AREAS. SOD ON SLOPES GREATER THAN 3:1 SHALL BE STAKED IN PLACE. ROLL OR STAMP LIGHTLY AND WATER THOROUGHLY WITH A FINE SPRAY IMMEDIATELY AFTER PLANTING.

6. MISCELLANEOUS LANDSCAPE WORK

LANDSCAPE MAINTENANCE

MAINTAIN LANDSCAPE WORK UNTIL FINAL ACCEPTANCE IS ISSUED BY THE OWNER'S REPRESENTATIVE. INCLUDE WATERING, WEEDING, CULTIVATING, RESTORATION OF GRADE, MOWING AND TRIMMING GRASS, PRUNING TREES AND SHRUBS, PROTECTION FROM INSECTS AND DISEASES, FERTILIZING AND SIMILAR OPERATIONS AS NEEDED TO INSURE NORMAL GROWTH AND GOOD HEALTH FOR LIVE PLANT MATERIAL.

PLANT MATERIAL SUBSTITUTION

NO SUBSTITUTION OF PLANT MATERIAL, TYPE OR SIZES WILL BE PERMITTED WITHOUT AUTHORIZATION FROM THE LANDSCAPE ARCHITECT.

PLANTING BED PREPARATION

ALL PLANTING BEDS SHALL BE PROPERLY PREPARED PRIOR TO THE COMMENCEMENT OF ANY PLANTING. PLANTING AREAS, INCLUDING LAWNS SHALL BE FREE OF ALL WEEDS AND NUISANCE VEGETATION. IF TORPEDO GRASS (PANICUM REPENS) IS PRESENT OR ENCOUNTERED DURING PLANTING, THE LANDSCAPE CONTRACTOR SHALL STOP ALL PLANTING UNTIL IT CAN BE DEMONSTRATED THAT IT HAS BEEN COMPLETELY REMOVED OR ERADICATED. THERE SHALL BE NO EXCEPTIONS TO THIS PROVISION.

ALL LANDSCAPE ISLANDS AND BEDS WILL BE FREE OF SHELL ROCK AND CONSTRUCTION DEBRIS AND WILL BE EXCAVATED TO A DEPTH OF 30 INCHES OR TO CLEAN, NATIVE SOIL AND FILLED WITH THE SPECIFIED REPLACEMENT SOIL.

LANDSCAPE WARRENTY

THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL PLANT MATERIAL FOR A PERIOD OF SIX (6) MONTHS FROM THE DATE OF CONDITIONAL ACCEPTANCE IN WRITING FROM THE LANDSCAPE ARCHITECT. AT THE TIME OF CONDITIONAL ACCEPTANCE, THE SIX (6) MONTH PERIOD SHALL COMMENCE. ANY MATERIALS WHICH HAVE DIED OR DECLINED TO THE POINT WHERE THEY NO LONGER MEET FLORIDA #1 CONDITON DURING THIS PERIOD SHALL BE PROMPTLY REPLACED WITH SPECIMENS THAT MEET THE MINIMUM REQUIREMENTS CALLED FOR ON THE DRAWINGS. THE LANDSCAPE CONTRACTOR SHALL NOT BE HELD RESPONSIBLE FOR THE DEATH OR DAMAGE RESULTING FROM ACTS OF GOD SUCH AS LIGHTNING, VANDALISM, AND AUTOMOBILES OR FROM NEGLIGENCE BY THE OWNER. CONTRACTOR OR SHALL BE RESPONSIBLE FOR WATERING AND OTHERWISE MAINTAINING PLANTS UP TO THE CONDITIONAL ACCEPTANCE PERIOD, UNLESS A WRITTEN AGREEMENT WITH THE LANDSCAPE ARCHITECT PROVIDES FOR A DIFFERENT ARRANGEMENT.

LANDSCAPE NOTES

ALL PLANT MATERIAL SHALL BE FLORIDA NUMBER 1 OR BETTER AS DEFINED BY THE DIVISION OF PLANT INDUSTRY 'FLORIDA GRADES AND STANDARDS' LATEST EDITION.

ALL LANDSCAPE SHALL CONFORM TO THE REQUIREMENTS OF THE CITY OF STUART LAND DEVELOPMENT REGULATIONS. THE CITY OF STUART LANDSCAPE CODE SHALL GOVERN IN THE EVENT OF A CONFLICT.

THE LANDSCAPE CONTRACTOR SHALL NOT MAKE ANY SUBSTITUTIONS AND/ OR CHANGES WITHOUT THE AUTHORIZATION OF THE CITY OF STUART, THE OWNER AND THE LANDSCAPE ARCHITECT.

THE LANDSCAPE CONTRACTOR SHALL REVIEW THE PROJECT DRAINAGE AND UTILITY PLANS PRIOR TO CONSTRUCTION AND AVOID ALL CONFLICTS. THE LANDSCAPE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO COMMENCING WORK.

THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL PERMITS.

TREES SHALL BE POSITIONED TO AVOID CONFLICTS WITH SIGNAGE AND SITE LIGHTING.

ALL TREES SHALL BE LOCATED WITHIN A MULCH PLANTING BED WITH A MINIMUM OF TWO (2) FEET OF CLEARAINCE TO THE EDGE OF THE BED.

ALL TREES PLANTED UNDER OR ADJACENT TO FPL POWER LINES WILL COMPLY WITH THE FPL RIGHT TREE IN THE RIGHT PLACE GUIDELINES (REV 5/95)

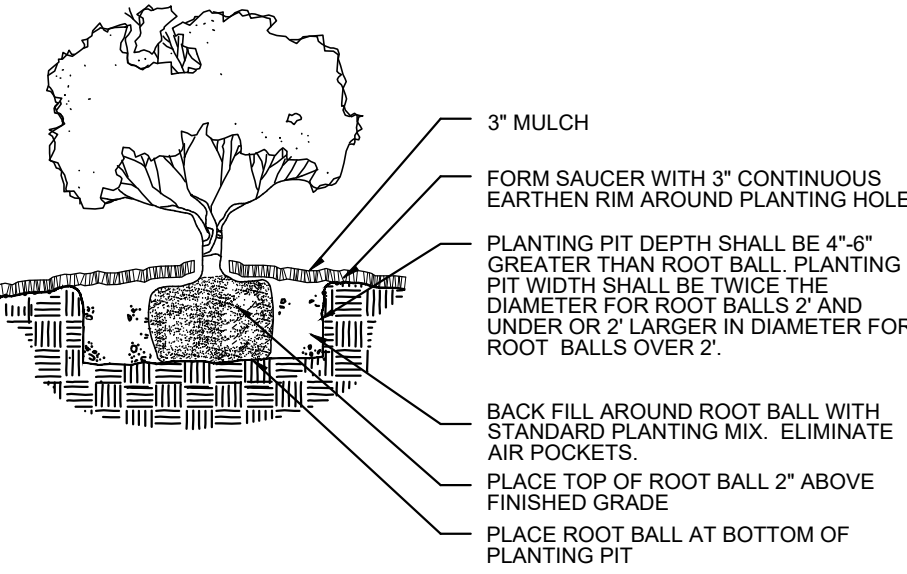
PERIMETER TREES AT THE TIME OF PLANTING SHALL BE SPACED IN A WAY THAT COMPLEMENTS THE SPACING OF ANY EXISTING TREES ON ADJACENT DEVELOPED AREAS.

ALL AREAS SHALL BE FULLY IRRIGATED IN ACCORDANCE WITH THE REQUIREMENTS OF THE CITY OF STUART.

ANY AREA DESIGNATED WITH EXISTING VEGETATION TO REMAIN THAT IS DISTURBED DURING CONSTRUCTION WILL BE RESTORED.

ALL EXISTING LANDSCAPING AND TREES TO REMAIN SHALL BE BARRICADED WITH ORANGE CONSTRUCTION BARRICADE. THE BARRICADE SHALL BE INSTALLED AT THE DRIP LINE OF THE TREE/PALM OR AT THE EDGE OF THE SHRUB MASS. BARRICADES SHALL REMAIN IN PLACE THROUGHOUT THE DURATION OF CONSTRUCTION.

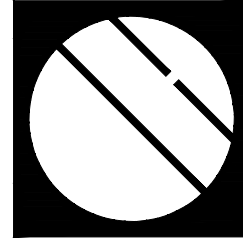
PLANTING DETAILS



SHRUB/GROUNDCOVER PLANTING DETAIL

MTS

Landscape Details



Cotleur & Hearing

Landscape Architects
Land Planners
Environmental Consultants

1934 Commerce Lane
Suite 1
Jupiter, Florida 33458

www.cotleurhearing.com

Lic# LC-C000239

Dog's World Resort

Stuart, Florida

DESIGNED _____ DEH
DRAWN _____ JS/RO
APPROVED _____ DEH
JOB NUMBER _____ 18-1010.03
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REVISIONS _____

June 17, 2022 8:48:42 a.m.
Drawing: 18--1010.03 SP.DWG

SHEET 3 OF 3

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These drawings are the property of the architect and are not to be used for extensions or on other projects except by agreement in writing with the architect. Immediately report any discrepancies to the architect.



Dear _____

My name is Justin Phillips and I own the award-winning DogsWorld Canine Resort in Jupiter. We are looking to open a brand-new location in your neighborhood.

Because we want to be good neighbors, we'd like to invite you to a community meeting we are holding on May 18th from 6:00 pm – 7:30 pm to show you our plans for our DogsWorld Stuart project. The meeting will be held at 400 SW 7th Street, Stuart, FL.

As part of the meeting, we would be happy to answer any questions you might have and welcome your feedback. I hope to see you there, so we have the chance to meet in person.

Best Regards,
Justin

Meeting

Date: May 18th, 2022

Time: 6:00 pm – 7:30 pm

Location: 400 SW 7th Street, Stuart, FL 34994

address		owner	Mailing Address		phone number	email	
627 SW Channel Avenue	Stuart, FL 34994	Joseph Sabato	4527 SW Sand Avenue	Palm City, FL 34990	772-708-0097	joseph@sabatosells.com	
649 SW Channel Avenue	Stuart, FL 34994	Jennifer Chase	649 SW Channel Avenue	Stuart, FL 34994	772-485-4545	JENNIFER.CHASE@EARTHLINK.NET	
633 SW Channel Avenue	Stuart, FL 34994	Robert Mautz	633 SW Channel Avenue	Stuart, FL 34994	414-208-0793	rmautz@aol.com	
625 SW Channel Avenue	Stuart, FL 34994	Gary Slauson	625 SW Channel Avenue	Stuart, FL 34994	561-543-5169		
617 SW Channel Avenue	Stuart, FL 34994	Tracy Barnes	617 SW Channel Avenue	Stuart, FL 34994	772-215-4646	fishguide@msn.com	
605 SW Channel Avenue	Stuart, FL 34994	John Sunderman	605 SW Channel Avenue	Stuart, FL 34994	386-279-9412	johnsunderman@rocketmail.com	
201 SW 6th Street	Stuart, FL 34994	Tracy Griffith	201 SW 6th Street	Stuart, FL 34994	772-631-9464		
433 SW McPherson Street	Stuart, FL 34994	Pamela Orr	433 SW McPherson Street	Stuart, FL 34994	772-807-2557	pam@pamorr.com	
425 SW McPherson Street	Stuart, FL 34994	Curt Meulengracht	425 SW McPherson Street	Stuart, FL 34994	772-708-4242		
415 SW McPherson Street	Stuart, FL 34994	Curt Meulengracht	425 SW McPherson Street	Stuart, FL 34994	772-263-1035	cmeulengracht@hotmail.com	
409 SW McPherson Street	Stuart, FL 34994	John Gthrie	409 SW McPherson Street	Stuart, FL 34994			
620 SW Channel Ave	Stuart, FL 34994	Thomas Hornaman	620 SW Channel Ave	Stuart, FL 34994	772-286-4422	thomashornaman@webtv.net	
404 SW 7th Street	Stuart, FL 34994	Gonzalo Hernandez	404 SW 7th Street	Stuart, FL 34994	561-288-4349		
410 SW 7th Street	Stuart, FL 34994	Todd Smith	410 SW 7th Street	Stuart, FL 34994	772-405-0214		
414 SW 7th Street	Stuart, FL 34994	Timothy Arendt	414 W 7th Street	Stuart, FL 34994	772-781-6120	theresawynn@comcast.net	
420 SW 7th Street	Stuart, FL 34994	Kilner Reece	312 NE Julia Ct	Jensen Beach, FL 34957	772-201-0505	reece@k2group.com	
428 SW 7th Street	Stuart, FL 34994	James Stuckey	PO Box 1800	Stuart, FL 34995	321-610-8666		
441 SW 7th Street	Stuart, FL 34994	Glenda Hinkley	956 SW Sand Oak Drive	Palm City, FL 34990	772-285-4214	glendahinkley@aol.com	

Please sign in!

Dogsworld



Canine Resort

Name	Address	Email/Phone
Jennifer Chase	649 SW Channel Ave.	jc20@bellsouth.net 772-485-4545
Tracy Barnes	617 SW Channel Ave	fishguide3@gmail.com (772) 215-4646
Cathy Combs	140 S Sewall's Point Rd	cocombs@smu.edu
Doug Dester		



Dogs World

Frequently Asked Questions

How does your team training work?

All our staff members must go through a nationally recognized Pet Care Certification Program. They must pass understanding Canine Body Language; Managing Group play and Pet Care 101 this process takes about 3 weeks.

Is there a vet on staff or do the dogs always have access to a vet if needed?

We do not have any medical staff members. We have built several relationships with local vets in our area and always have access to a 24/7 emergency vet if needed. We are recommended by countless vets due to our great reputation.

Is the hotel staff willing to take your dog to your vet or call your vet if necessary?

Yes, our primary goal is always your pet's health and safety. We will always give your pet the best premium care possible.

How does the dog evaluation process work?

We conduct a temperament test with all new guests. They are introduced to 3 different dogs on lead that are similar in age, size, and playstyle.

Does the hotel provide daily update e-mails, phone calls, text messages, or "report cards" to keep you up to date on your dog's progress? Does the hotel mind if you call to check in on your dog periodically?

Of course! Give us a call and we can give an update report on your pup's eating, potty walks and play time activities. Every lodger goes home with a report card of how they did during their stay. In addition to daily updates of your pet during their stay we also post pictures on social media every day of all our pups. We do offer some lodging packages where you can get daily emails from your pet as well as pictures and access to the managers if needed.

Are dogs ever left unsupervised during their stay or during play?

They are never left unsupervised in playgroup. They are always under the watch of a certified pet care professional. They do get rest and downtime in their room and are checked on periodically throughout the day by staff.

How do you keep your play areas outside clean?

Outdoors we use a wysis wash system twice a day to sterilize our artificial turf. We don't have any pesticides.

If your dog is aggressive with other dogs, are they able to accommodate that and make sure that your dog is never put in a situation where they are exposed to another dog?

We have the option for 1:1 daycare and lodging. A canine care specialist will be assigned to your kids to make sure they are well accommodated for. We never accept dogs that are a danger to humans.

What are the hours the dogs are outside?

Our dogs have business walks at 7:30 am and again at 5:30 pm. They enjoy a playtime rotation between inside and outside between 9 am - 11 am and 1 pm - 4 pm.

Are the dogs regularly checked on throughout the day and night during their stay?

We have 24-hour surveillance cameras throughout our facility and staff members will check on our guests periodically throughout the day when they are in their room.

What are your hours of business?

We are open 7am-7pm Monday- Friday and Saturday- Sunday 9am -3 pm.



Dogs World

If problems or questions arise will the dog hotel call you right away?

Our first call is always to the pet parent. If for any reason, we cannot get ahold of you we follow your written instructions collected on your first visit. Your baby is now our baby, and we will do whatever is possible, to ensure they receive excellent care.

If there are any issues what is the best way to contact someone?

Our Jupiter location main line is 561-320-9122. Please ask for our General Manager Katie or Owner Justin.

Is the dog hotel equipped for emergency situations with appropriate fire exits, fire extinguishers, and sprinkler systems?

Yes, all the fire equipment is up-to-date including sprinklers and a generator.

What happens if your dog gets bitten or gets into a fight with another dog?

In the rare case this happens, we call the parents and proceed with medical attention if necessary. Expenses are typically covered by us.

Are ALL dogs at the hotel required to be up to date on vaccinations and a flea prevention?

Yes. All must have age-appropriate vaccines. These include Bordetella, Distemper-Parvo, Rabies, as well as a monthly flea and tick preventative.

What kind of services do you offer?

We Offer Daycare, Overnight Lodging and Bathing Services

Are ALL dogs taking part in daycare and play programs screened for sociability and required to be spayed or neutered?

Yes. All dogs must be spayed or neutered by 9 months of age to continue to engage in group activities.

Do we house dogs during hurricanes and have staff stay with them? Do we have a generator?

We are a safe place to leave your dog in case of an evacuation. We have two hurricane teams. One that stays with the dogs throughout the storm and one that immediately comes in to relieve the first team. We also have a full facility generator.

What makes us a luxury pet resort over a kennel?

We strive to go above and beyond to treat your dog like family and give it the best home away from home. Traditional kennels do not emphasize and fulfill dogs daily needs for play, socialization, and affection. Our level of care is much higher than traditional kennels can deliver.

Here's a few fun facts about Dogsworld.....

We have been the top donor for the United States War Dogs Association in the southeast region!

We were voted best of Palm Beach County for Pet Resort and Pet Lodging in 2020 and again in 2022!

We were voted Best Pet Resort in Jupiter six years in a row!

We have a 4.8 rating from google with close to 400 reviews!!

City of Stuart
Development Department
121 SW Flagler Avenue
Stuart, FL 34994
Ph. 772-288-5300
Fax 772-288-5388

AFFIDAVIT ATTESTING TO NOTIFICATION

James McKinney, being first duly sworn, depose(s) and say(s):

That (I am / we are) the owner(s) or petitioner(s) of the following described property which constitutes the location for which notification is required:

400 SW 7th Street, Stuart, FL, 34994

That a copy of the notice was sent by regular U.S. Mail on 8/18/22 to the property owners within 300 feet of the subject property; and

That a list of the property owners and their addresses is on file with the City of Stuart; and

That a photograph showing the placement of the notification sign be made a part of this Affidavit; and

That notice was sent and property was posted 15+ days prior to the scheduled public hearing(s) for this item.

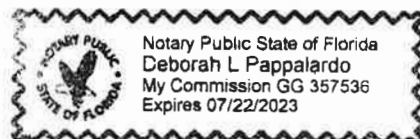
James McKinney
SIGNED (PROPERTY OWNER / AUTHORIZED AGENT)

SIGNED (PROPERTY OWNER / AUTHORIZED AGENT)

STATE OF FLORIDA, COUNTY OF Manatee
Sworn and subscribed before me by means of physical presence or
online notarization, this 22 day of August, 2022 By
James McKinney
Personally Known OR Produced Identification

du
Type of Identification Produced:

Notary Public, State of FL
(Notary Seal)



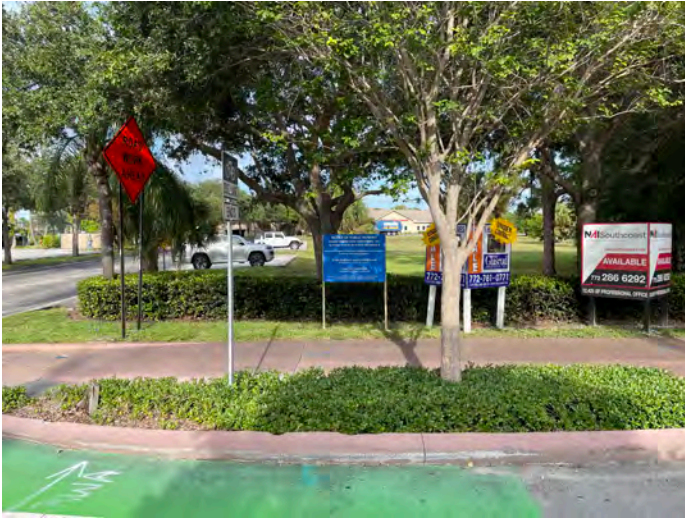
My Commission expires:



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CITY OF STUART, FLORIDA AGENDA ITEM REQUEST City Commission

Meeting Date: 9/12/2022

Prepared by: Michael Mortell, Erin Wohlitka

Title of Item:

REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES (RC):

ORDINANCE No. 2488-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

Summary Explanation/Background Information on Agenda Request:

REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES

The revisions to Chapter 36 are intended as a response to the adoption of Florida Statute Section 337.401(7). The Statute was adopted in 2017 and then updated in 2019.

Section 337.401(7) of Florida Statutes currently prohibits municipalities from interfering with the placement of small cell facilities. Examples of prohibitions include but are not limited to the following:

1. City of Stuart may not charge applicants to register or renew small wireless facilities *in the right-of-way*. There is no prohibition as to where in the right of way the facilities can be placed.
2. The City of Stuart may not prohibit, regulate, or charge for the collocation of facilities in the right-of-way or for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public right-of-way.
3. The City of Stuart may not require the provider to place the small wireless facilities on any specific utility pole or category of poles, or require multiple antenna systems on a single utility pole. The City of Stuart is not allowed to require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocating of a small wireless facility on a new utility pole.
4. The City of Stuart may not require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the City, including reserving fiber, conduit, or pole space for the City. In Short, there are no extractions or "impact" fees allowed.
5. The City of Stuart may not require that an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for placement of small wireless facilities in the locations identified by the application.

6. The City of Stuart may not limit the placement of small wireless facilities by minimum separation distances. Also, this means that if there is an ATT Pole in the Right of Way, Verizon has the right to put a pole 3 feet away from it.
7. The City of Stuart may not require compliance with the City's regulations regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way under the control of the Florida Department of Transportation unless the authority has received a delegation from the department for the location of the small wireless facility or utility pole, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit.
8. The City of Stuart may not require a meeting before filing an application.
9. The City may not require public notification or a public meeting for the placement of communication facilities in the right-of-way.
10. The City of Stuart may not limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits allowed by Florida Statutes.
11. The City may not prohibit the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of Section 337.401(7)(d), Florida Statutes.
12. The City may not require that any component of a small wireless facility be placed underground except in areas where all utilities in the right-of-way are required to be placed underground.
13. The City of Stuart may not institute, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.

Based upon research, it appears that the City of Stuart does have the ability to take the following actions:

Pursuant to **Section 337.401(7)(r) of Florida Statutes**, the City of Stuart, upon the adoption of an ordinance, may include the following:

1. The City may require the use of a similar design, material and color if a new pole is being installed to replace an existing pole. A new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color;
2. The City may require reasonable spacing requirements concerning the location of a ground-mounted component of a small wireless facility which does not exceed 15 feet from the associated support structure; or a small wireless facility to meet reasonable location context, color, camouflage, and concealment requirements, subject to the limitations in Section 337.401(7), Florida Statutes;
3. The City may require a new utility pole used to support a small wireless facility to meet reasonable location context, color, and material of the predominant utility pole type at the proposed location of the new utility pole. Example is the black antique light poles on Osceolla.
4. Section 337.401(7)(d) of Florida Statutes, further states that the City of Stuart can limit the height of small wireless facilities to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated.
5. Unless waived by the local government, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than utility poles for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the City of Stuart can limit the height of the utility pole to 50 feet.

CONCLUSION - Florida law **does not allow the City to prohibit the location of small wireless facilities** in its rights-of-way, and limits the ability of the City to establish review processes and location or design requirements for such facilities. The proposed ordinance is modeled after the Town of Jupiter Island. The City has received comments from the industry which are included in the agenda. The

majority of the comments were resolved prior to this meeting. However, the remaining comments should probably be addressed by the City Commission.

Funding Source:

N/A

Recommended Action:

Approval of Ordinance No. 2488-2022.

ATTACHMENTS:

1. Ordinance 2488-2022 - Repeal and Reestablish Chapter 36, Article V of Code of Ordinances
2. Ord 2488-2022 Exhibit A



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2488-2022

* * * * *

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, the City Commission of the City of Stuart, Florida has determined that the following amendments promote and protect the general health, safety, and welfare of the residents of the City of Stuart by providing reasonable regulations to communications facilities and utility poles within the public rights-of-way; and

WHEREAS, this Ordinance accommodates the growing needs and demand for communications services and new facilities and technologies; and

WHEREAS, Section 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

WHEREAS, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, in 2017, Florida enacted the Advanced Wireless Infrastructure Deployment Act, codified in Subsection 337.401(7), *Florida Statutes* (“the Small Cell Statute”); and

WHEREAS, the Small Cell Statute creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to support small wireless facilities, micro wireless facilities, and the collocation of small wireless facilities and micro wireless facilities in the public rights-of-way; and

WHEREAS, the Small Cell Statute provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, camouflage and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, the Small Cell Statute also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance construction bonds, force majeure, abandonment, and city liability provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, in 2019, the Florida Legislature enacted, and the Governor approved CS/CS/CS/SB 1000 (“SB 1000”), amending Section 337.401, Florida Statutes, including portions of the Small Cell Statute; and

WHEREAS, it is the City Commission’s intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and

WHEREAS, it is the City Commission’s further intent to treat each communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; and

WHEREAS, it is the City’s intent that rules or regulations imposed by the City relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services; and

WHEREAS, the city’s rights-of-way are essential for the travel of persons and the transport of goods throughout the city and are a unique and physically limited resource requiring proper management by the city to ensure public safety, maximize efficiency, minimize costs to city taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, the City Commission has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the city’s Comprehensive Plan; and

WHEREAS, the City Clerk submitted notice of the first hearing on this proposed Ordinance to the Florida Secretary of State, consistent with Section 337.401(3)(d), Florida Statutes.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance. The Regulation of Communications Facilities on Private Property is found within Chapter 36, Article V, of the City of Stuart Code of Ordinances.

SECTION 2. That CHAPTER 36, ARTICLE V; SECTION 36-128 through 36-153 COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAYS, is hereby repealed and replaced with such language attached as **Exhibit “A.”**

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5. This ordinance shall become effective upon passage.

Passed on first reading the 25th day of July, 2022.

Commissioner MCDONALD offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner CLARKE and upon being put to a roll call vote, the vote was approved unanimously.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
CAMPBELL RICH, COMMISSIONER
DR. CHRISTOPHER COLLINS, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this 12th day of September, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

(The remainder of this page intentionally left blank)

CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before The above Ordinance, Acceptance and Agreement was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of September, 2022 by _____, and Mary Kindel, City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation, who ☐ are personally known to me or ☐ have produced _____ as identification.

(Notary Seal)

Signature of Notary Public
Printed Name: _____

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CHAPTER 36 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE V. Communications Facilities in the Public Rights-Of-Way.

Sec. 36-128. - Intent and purpose; Applicability; Authority to Implement.

(a) Intent and purpose. It is the intent of the City to promote the public health, safety and general welfare by providing for the placement and maintenance of communications facilities in the public rights-of-way within the City; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including the United States and Florida Constitutions, F.S. § 337.401, as it may be amended, the City's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, § 6409(a) of the Spectrum Act of 2012, (codified as 47 U.S.C. § 1455(a)), FCC regulations, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this section; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City shall be governed by and shall comply with all applicable federal and state laws.

(b) Applicability.

(1) This Ordinance shall apply to all facilities for communications services placed or maintained in the City public rights-of-way pursuant to F.S. § 337.401, including but not limited to any person holding a certificate of franchise authority pursuant to F.S. § 610.103, communications services providers, pass-through providers, and wireless providers. To the extent not prohibited by applicable law, this Ordinance shall apply to all applications pending at the time of adoption of this Ordinance, to place or maintain communications facilities in the public rights-of-way. Persons seeking to place or maintain communications facilities on private property or other property to which the City, any municipality, special district, Martin County, Martin County School Board, State of Florida, or federal government has a fee-simple or leasehold interest in real property, not within and exclusive of the public rights-of-way, located within the jurisdictional boundaries of the City shall comply with the applicable provisions of the Land Development Regulations and the City Code of Ordinances unless such property is addressed expressly in this Ordinance or applicable law. This Ordinance is not applicable to communication facilities outside the public rights-of-way, unless addressed expressly herein. Pursuant to this Ordinance, a person may be authorized to place or to maintain communications facilities, including small wireless facilities, micro wireless facilities, utility poles for collocation of small wireless facilities, fiber, coaxial cable, and backhaul facilities in the City public rights-of-way. Wireless support structures, telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way unless otherwise authorized in this Ordinance, to the extent not inconsistent with applicable law. This Ordinance applies to the placement of conduit, fiber or cable for the purpose of providing backhaul or communications service. Consistent with F.S. § 337.401, this Ordinance applies to a cable or video service provider that has been issued and holds a certificate of franchise authority from the Florida Department of State pursuant to F.S. § 610.103, that places or maintains a cable system or

wireline facilities in the City's public rights-of-way. Rules or regulations imposed by the City relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way shall be generally applicable to all providers of communications services, to the extent federal or Florida law does not require different treatment. Florida law requires that the City's rules and regulations take into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities. Accordingly, in the exercise of the City's authority, as required by Florida law, this Ordinance provides different regulations applicable to various communications facilities. This Ordinance does not apply to electric utility poles for an electric distribution system located in the City public rights-of-way pursuant to a valid franchise agreement with the City. However, collocation of small wireless facilities on such utility poles and any utility poles not for an electric distribution system placed or maintained by a City franchised utility in the public rights-of-way will be governed by the applicable provisions of this Ordinance. Ordinances approving a franchise agreement and a valid franchise agreement with an electric utility shall remain in full force and effect, notwithstanding any provision of this Ordinance. This Ordinance shall not apply to communications facilities owned by the City or to communications facilities owned by a person, including an electric cooperative, to the extent such facilities are utilized solely on an internal, non-commercial basis by said person.

(2) This Ordinance implements inter alia, F.S. § Section 337.401, as amended, including the Advanced Wireless Infrastructure Deployment Act, F.S. § 337.401(7) ("Small Cell Statute"). By adopting this Ordinance, the City does not waive any rights including any rights that may exist under federal law, the Florida Constitution and the U.S. Constitution. In the event F.S. § 337.401, is repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law or regulation, in whole or in part, provisions of this Ordinance may no longer apply, in which case pending and future applications or requests for communications facilities in the public rights-of-way will be governed by applicable law. In addition, permits issued pursuant to this Ordinance may be suspended or revoked, and facilities installed pursuant to permits issued pursuant to this Ordinance or without permits as authorized by this Ordinance may be required to be removed at the facility owner's expense, to the extent consistent with applicable law. It is the City's intent not to create any vested rights in placing and maintaining communications facilities in the public rights-of-way as a result of this Ordinance or any permit issued pursuant to this Ordinance, to the extent not inconsistent with applicable law.

(3) To the extent any provision of this Ordinance conflicts with the Code of Ordinances or Land Development Regulations of the City of Stuart, this Ordinance shall control.

(4) This Ordinance shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Ordinance, all pending applications for permits subject to this Ordinance, and all existing communications facilities placed in the public rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law. A person with existing communications facilities in the public rights-of-way shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance or prior to submitting an application for a permit pursuant to this Ordinance. This provision shall not require the removal or alteration of existing communications facilities placed or maintained in the public rights-of-way pursuant

to a previously issued permit or otherwise lawfully installed prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed ~~by the City Manager, or pursuant to enforcement of this Ordinance or applicable law.~~

Commented [A1]: To be consistent with the City's own enforcement and appellate provisions, this language should be deleted for consistency.

(5) Reservation of rights. The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

(c) Authority to implement Ordinance. The City Manager is authorized to adopt, to modify, and to repeal rules and regulations, not inconsistent with this Ordinance, to carry out the intent and purposes of this Ordinance.

Sec. 36-129. - Definitions.

For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined in this Ordinance or in any permit that may be granted pursuant to this Ordinance shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended or § 6409(a) of the Spectrum Act of 2012, 47 U.S.C. § 1455(a) (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the Code, and if not defined in the Code, shall be construed to mean the common and ordinary meaning.

ABANDONMENT OR ABANDONED. The cessation of all uses of a communications facility for a period of one hundred eighty (180) or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be Abandonment of a communications facility. A wireless infrastructure provider's failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine (9) months after the application is approved in accordance with F.S. § 337.401(7)(j) shall ~~be presumed to be an abandonment which may be rebutted by the wireless infrastructure provider and/or wireless service provider. constitute a rebuttable presumption of~~ abandonment. The terms Abandonment or Abandoned are not intended to include a dropped line from a potential or existing customer in the event the communications services provider reasonably anticipates future use of the dropped line.

Commented [A2]: The definition exceeds what the city may require pursuant to F.S. § 337.401(7)(j). While we would like the entire sentence removed from the definition, as an alternative, the revised language will allow the wireless infrastructure provider and/or wireless service provider to rebut a presumption of abandonment.

Commented [A3R3]: No.

ABUT. When used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot line or boundary line with another lot or parcel of land or public right-of-way.

ADJACENT PROPERTIES OR PROPERTIES ADJACENT. Those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site, ~~and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.~~

Commented [A4]: In the context of the use of the public rights-of-way ("ROW"), this language is not applicable.

Commented [A5R5]: City will remove

ANTENNA. Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

APPLICABLE CODES. Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including, but not limited expressly to the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual, the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, ~~and City codes or ordinances, and standards and regulations,~~ to the extent not inconsistent with the 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual. It is the intent of this definition to only be applicable to this Section of the City Code as the City Recognizes that the term "Applicable Codes" is set forth in Florida Statutes and this definition is not intended to alter change or modify the statutory definition.

APPLICANT. A registrant who submits an application.

APPLICATION. A request submitted by an applicant to the City for a permit to collocate small wireless facilities or to place a new utility pole used to support a small wireless facility in the public rights-of-way.

AS-BUILT PLANS. A set of final and complete drawings in a format as specified by the City submitted upon completion of a project, ~~that~~ reflects all changes made during the construction process, and shows the exact dimensions, geometry and location of all elements of the work completed under the permit.

AUTHORITY. The City, to the extent it has jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from F.S. § 337.401(7).

AUTHORITY or CITY UTILITY POLE. A utility pole owned by the City in the public right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

- (a) A retirement community that:
 - (i) Is deed restricted as housing for older persons as defined in F.S. § 760.29(4)(b).
 - (ii) Has more than 5,000 residents; and
 - (iii) Has underground utilities for electric transmission or distribution.

BACKHAUL FACILITIES. A physical transmission path, all or part of which is within the public rights-of-way controlled by the City or any government entity, used for the transport of communications data by wire or fiber from a wireless facility to a network.

Commented [A6]: Exceeds the definition of Applicable Codes established in 337.401(7)(b) FS. Applicable Codes is a defined Statutory term and is broader than just local building codes but does not include City Codes in general. The Statute defines the term to avoid ambiguity and ensure consistency throughout the State. Any violation of Applicable Codes also forms a statutory basis for denial.

Commented [A7]: This requirement for a survey is unreasonable and never before required of facilities in the ROW. Moreover, as applied to video service providers, a City may not require this level of information per Section 610.114 F.S.

Further, to the extent there are no changes required as the result of changes that occur in the field from the previously provided and approved plans, the City should allow for a statement that confirms that the improvements were built as provided for in the approved permitted plans with no changes

Commented [A8]: Section 337.401(7)(b).12.b, F.S. specifically excludes Small Wireless Facilities ("SWF"), which includes antenna, from any definition of backhaul facilities.

BELOW-GRADE COMMUNICATIONS FACILITY. Communications facilities, including manholes or access points, that are entirely contained below grade within the public rights-of-way.

CLEAR ZONE. Consistent with the latest edition of the Florida Department of Transportation Index, the roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

COLLOCATION OR COLLOCATE. To install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

COMMUNICATIONS FACILITY or FACILITY or SYSTEM. Any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the City and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. A utility pole intended for collocation of a small wireless facility shall be considered a facility for purposes of this Ordinance.

COMMUNICATIONS SERVICES. The transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission or conveyance, and shall also include cable service and video service as defined in F.S. §§ 610.103(1) and (11).

COMMUNICATIONS SERVICES PROVIDER. Any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider.

COMMUNICATIONS SERVICES TAX. The local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to F.S. § 202.19, as amended.

CONSOLIDATED PERMIT APPLICATION. A single permit application that would otherwise require individual permit applications for the collocation of between two (2) and thirty (30) small wireless facilities to existing structures within the public rights-of-way.

EXCAVATE or EXCAVATION. Consistent with the definition contained in F.S. § 556.102(6), as it may be amended, any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of

the earth, including land beneath the waters of the state, as defined in F.S. § 373.019(22), and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

EXTENSION OF EXISTING FACILITIES or EXTENSION. Those extensions from the public rights-of-way into a customer's private property for purposes of placing a service drop or those extensions from the public rights-of-way into a utility easement to provide service to a discreet identifiable customer or group of customers.

Commented [A9]: This language creates a limitation on "extensions" that is inconsistent with 337.401(3)(g), F.S.

FCC. The Federal Communications Commission.

FLORIDA BUILDING CODE. The Florida Building Code promulgated under F.S. ch. 553 and includes the applicable amendments thereto as both may be amended from time to time.

FLORIDA GREENBOOK. The latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

FORCE MAJEURE EVENT. A cause or event not within a person's control that shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a person's control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person's directors, officers, employees, contractors or agents.

GRAFFITI. Any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility. A wrap shall not be considered graffiti.

HISTORIC PROPERTY. Any prehistoric or historic district, site, building, structure, or object or other real or personal property, of historical, architectural or archaeological value to preserve the character and aesthetics of the City established by Ordinance prior to April 1, 2017. Historic Preservation of the City Code of Ordinances or as designated historic and/or scenic under State or law. These properties or resources may include, but are not limited to, roadways, sidewalks, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, character, scale, or culture of the City.

Commented [A10]: Please see Section 337.401(k), F.S. and Section ____ of Draft Ordinance.

HOMEOWNERS' ASSOCIATION. An incorporated association whose members consist of owners of single-family homes or condominium units that manage or control property owned by the association.

IN PUBLIC RIGHTS-OF-WAY or IN THE PUBLIC RIGHTS-OF-WAY. In, on, over, under or across the public rights-of-way.

LICENSED ENGINEER. A Florida registered professional engineer, or person who is exempt from such registration requirements as provided in F.S. § 471.003.

LOT. A designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

MICRO WIRELESS FACILITY. A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

PARCEL. Any piece of real property that has a single parcel identification number assigned to it by the Martin County Property Appraiser.

PASS-THROUGH PROVIDER. Means the definition ascribed in F.S. § 337.401(6)(a)1. which states:

- a. A "pass-through provider" is any person who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to chapter 202 and who does not remit taxes imposed by that municipality or county pursuant to chapter 202.
- b. Notwithstanding sub-subparagraph a., a person who does not remit taxes imposed by a municipality or county pursuant to chapter 202, but pursuant to s. 202.16(2) sells communications services for resale to a person who sells such services at retail or who integrates such services into communications services sold at retail in that municipality or county and who remits taxes imposed by that municipality or county pursuant to chapter 202, is not a pass-through provider.

PERMIT. The public right-of-way permit that must be obtained before a person may construct in the public right-of-way and shall include, but not be limited to, right-of-way engineering and construction permits issued by the City.

PERSON. Shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the City.

PLACE OR MAINTAIN or PLACEMENT OR MAINTENANCE or PLACING OR MAINTAINING. To erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is PLACING OR MAINTAINING the facilities. To the extent required by applicable law, a party providing service only through resale or only through use of a third party's unbundled network elements is not PLACING OR MAINTAINING the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not PLACING OR MAINTAINING facilities in the public rights-of-way.

PSC. The Florida Public Service Commission.

PUBLIC RIGHTS-OF-WAY. A public right-of-way, public easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley, or any other way for which the City is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface.

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PUBLIC RIGHTS-OF-WAY shall not include private property. **PUBLIC RIGHTS-OF-WAY** shall not include any real or personal City property except as described above, and shall not include City parks, buildings, fixtures, conduits, facilities or other structures or improvements, regardless of whether they are situated in the **PUBLIC RIGHTS-OF-WAY**.

Commented [A11]: This language needs to be clarified as Section 337.401(7)(b), F.S. makes it clear that any Authority Utility Pole located in the ROW is a Utility Pole for purposes of the Statute and Ordinance.

REGISTRANT or FACILITY OWNER. A communications services provider or other person that has registered with the City in accordance with the provisions of this Ordinance.

REGISTRATION and REGISTER. The process described in this Ordinance whereby a communications services provider provides certain information to the City.

REQUESTER. A person who submits a request pursuant to this Ordinance.

REQUEST. Any request other than an *Application* submitted by a person, associated with the placement or maintenance of a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way. A Request includes, but shall not be limited to, a request for approval of a registration, a request to place or maintain a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way and includes for example, but is not limited to, a permit to construct cable, fiber, conduit, backhaul facilities, pedestals, or a support structure that does not constitute a utility pole for the collocation of a small wireless facility in the public rights-of-way.

SHROUD. A covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure or wireless support structure.

SIGNAGE. Any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the wireless facility provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

SMALL WIRELESS FACILITY. A wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

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(b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

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SMART TECHNOLOGY. The City's present and future technology to support the City's smart technology initiatives, including but not limited to, sensors and smart lights, fiber, CCTV cameras, digital signage, data sharing with traffic applications, smart solar-powered charging stations, emergency alert applications and other initiatives over time.

CAMOUFLAGE DESIGN. A method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole as regulated by the objective design standards set forth in this code.

SURROUNDING NEIGHBORHOOD. The area within a five-three hundred (500) foot radius of a communications facility site or proposed communications facility site.

UTILITY. Any electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in F.S. §§ 337.401, 337.402, 337.403, and 337.404 as the "utility."

UTILITY POLE. A pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

WIRELESS FACILITY. Equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

- (a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (b) Wireline backhaul facilities; or
- (c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

WIRELESS INFRASTRUCTURE PROVIDER. A person who has been certificated under F.S. ch. 364, to provide telecommunications service or under F.S. ch. 610 to provide cable or video services in the state, and such person's affiliate, and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

WIRELESS PROVIDER. A wireless infrastructure provider or a wireless services provider.

Commented [A12]: Stealth is trademark term. The appropriate reference should be to "camouflage" design.

Commented [A13]: This is an unreasonably vague term and is not an "objective design standard" under Section 337.401(7)(r), F.S.

Commented [A14]: Review in context of use in Ordinance.

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WIRELESS SERVICES. Any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

WIRELESS SERVICES PROVIDER. A person who provides wireless services.

WIRELESS SUPPORT STRUCTURE. A freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than five (5) feet in height.

WRAP. An aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

Sec. 36-130. - Registration for placing or maintaining communications facilities in public rights-of-way.

(a) All persons, including, but not limited to a communications services provider, pass-through provider, or wireless provider, seeking to place or maintain a communications facility, backhaul facility, utility pole for collocation of a small wireless facility, or wireless support structure in public rights-of-way in the City pursuant to this Ordinance shall maintain an effective registration with the City in accordance with this Ordinance before being eligible to receive a permit. Subject to the terms and conditions prescribed in this Ordinance and approval of a permit, if required, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless provider with an existing communications facility in the public rights-of-way of the City as of the effective date of this Ordinance has ninety (90) days from the effective date of this Ordinance to comply with the terms of this Ordinance, including, but not limited to obtaining an effective registration, or be in violation thereof.

(b) Requirements for an effective registration. A person that places or maintains a communications facility in the City shall file an original registration, along with two complete copies with the City Manager that shall include the following information:

- (1) Name of the registrant;
- (2) Name, address and telephone number of the registrant's primary contact person in connection with the registration and name, address, telephone number and email addresses of the registrant's primary contact person(s) in the event of an emergency or issue involving its facilities, which shall be available 24 hours per day, 7 days per week.
- (3) A statement as to whether the registrant is a pass-through provider in the City as defined herein;
- (4) Evidence of the insurance coverage;
- (5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;

- (6) A copy showing the number of the registrant's certificate of authorization issued by the Florida Public Service Commission, the Florida Department of State, or the FCC; and
- (7) The registrant's federal employer identification number.

(c) ~~Insurance:~~

~~(1) Registrant shall provide, pay for and maintain satisfactory to the City, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Insurance Guide of A or better, or having a rating acceptable to the City. All liability policies shall provide that the City is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty days advance written notice must be given to the City of any cancellation or intent not to renew the policy coverages, except for non-payment of premium in which a ten (10) days' notice shall apply. In addition to the certificate of insurance, the registrant shall provide a redacted copy of the insurance policy, if requested by the City. A provider of communications services may add the City to any existing insurance policy and the City shall accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the City is a party.~~

~~(2) The limits of coverage of insurance required shall be not less than the following:~~

- ~~i. Worker's compensation and employer's liability. Insurance employer's liability: Florida statutory requirements.~~
- ~~ii. Comprehensive general liability. Bodily injury and property damage: \$1,000,000.00 combined single limit each occurrence. Said coverage shall include contractual liability, products/completed operations, independent or contractors.~~
- ~~iii. Automobile liability. Bodily injury and property damage: \$1,000,000.00 combined single limit each accident.~~
- ~~iv. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The City shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow form" basis.~~
- ~~v. Self insurance. Registrant may satisfy the insurance requirements and conditions of this division under a self insurance plan and/or retention if acceptable to the City in its sole discretion based on the City's evaluation of the registrant's ability to comply with the Code.~~

Commented [A15]: I removed because you pointed out that insurance was mentioned later in the ordinance at 36-147

~~Registrant agrees to notify the City, and/or indicate on the certificate(s) of insurance when self insurance is relied upon or when a self insured retention meets or exceeds \$100,000.00. The City reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity to self insure.~~

~~(3) Right to review. City, by and through its City Manager, reserves the right to review, modify, reject or accept any required policies of insurance or self insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this Ordinance. The City reserves the right, but not the obligation, to review and reject any insurer or self insurer providing coverage because of its poor financial condition or failure to operate legally.~~

~~(4) This Ordinance shall not be construed to affect in any way the City's rights, privileges and immunities as set forth in F.S. § 768.28. Insurance under this Ordinance shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this Ordinance and subject to the remedies as set forth herein. Notwithstanding the foregoing, the City may, in its sole discretion, require increased or decreased levels of insurance.~~

(d)(c) Review of Registration. The City shall review the information submitted for the registration. If the information is in accordance with this subsection the City shall notify the requester of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with this subsection, the City shall notify the requester in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The City shall undertake to provide such notification within 30 days after receipt of registration information. A notice of non-effectiveness of a registration shall not preclude reapplying or filing subsequent requests for registration under the provisions of this Ordinance.

(e)(d) Regulations Applicable to Registrations.

(1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this Ordinance governs only the placement or maintenance of communications facilities in public rights-of-way. To the extent not inconsistent with applicable law, registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the City's or another person's facilities. Within 90 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the City.

(2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any particular area in public rights-of-way within the City. Registrations are expressly subject to any future amendment to or replacement of this Ordinance, and further subject to any additional City ordinances, as well as any applicable state or federal laws.

(3) Unregistered use of public rights-of-way. To the extent that a communications services provider, wireless infrastructure provider or pass-through provider with facilities in the public rights-of-way, is not registered as required herein, said person shall register with the City pursuant to this Ordinance within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way and such persons may be subject to the enforcement remedies.

(4) Registration renewal. A registrant shall renew its registration with the City by September 30, every five years from the first September after the effectiveness of the registration in accordance with the registration requirements in this Ordinance, as may be amended. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the City restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this Ordinance. An existing effective registration pursuant to the City Code, prior to the effective date of this Ordinance shall continue to be effective and the registrant shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.

~~(5) — Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, or otherwise caused by the registrant, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, provided however, that a registrant's obligations hereunder shall not extend to any damages caused solely by the negligence, gross negligence, or willful acts of the City and to the extent not inconsistent with applicable law. In no event shall the City be liable for any damage or destruction to a communications facility placed in the City public rights-of-way including on a City utility pole, to the extent not inconsistent with applicable law. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. City agrees to notify the registrant, in writing, within a reasonable time of City receiving notice, of any issue it determines may require indemnification. Nothing in this Ordinance shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost, if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Ordinance shall be construed or interpreted:~~

- ~~i. — as denying to either party any remedy or defense available to such party under the laws of the State of Florida;~~
- ~~ii. — as consent by the City to be sued; or~~

iii. ~~as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.~~

~~(6)~~(5) A registrant may cancel a registration upon written notice to the City that the registrant will no longer place or maintain any communications facilities in public rights-of-way, and will no longer need to obtain permits to perform work in the public rights-of-way. A registrant shall not cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

~~(7)~~(6) Liens. No liens shall apply to public rights-of-way or City property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or on a City utility pole. Any liens on a registrant's facilities shall be subordinate to the rights of the City pursuant to this Ordinance. In the event any liens are filed on the City property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the City may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.

~~(8)~~(7) A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on the City's property including a utility pole as a result of a registrant's collocation on a City utility pole. A registrant shall reimburse the City for taxes paid by the City as a result of a registrant's facilities being placed or maintained in the public rights-of-way or on a City utility pole.

~~(9)~~(8) *Reports and records.*

(a) Upon reasonable request and as allowed by Florida Statutes, a registrant shall provide the following documents to the City as received or filed:

- i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the City to protect its interests under this Ordinance.
- ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

(b) The City shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.

~~(10)~~(9) Termination of Registration. The City may terminate a registration if:

- (a) A federal or state authority suspends, denies, or revokes a registrant's certification or license required to provide communications services;
- (b) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users

of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;

- (c) The registrant abandons all of its facilities in the public rights-of-way; or
- (d) The registrant commits substantial and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.

~~(11)~~(10) Notice of intent to terminate. Prior to termination, the City shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The registrant shall have thirty (30) days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the City, to accomplish the same and to take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way of the City safe. If the plan is rejected by the City, the City shall provide written notice of such rejection within fifteen (15) days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.

~~(12)~~(11) Post termination action. In the event of termination, following any appeal period, the former registrant shall:

- (a) in accordance with the provisions of this Ordinance and as may otherwise be provided under state law, notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in the public rights-of-way; or
- (b) provide the City with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the communications facilities are deemed to be abandoned and the City may exercise any remedies or rights it has at law or in equity as well as the City's remedies pursuant to this Ordinance, including but not limited to, utilize or allow other persons to utilize the registrant's facilities.
 - (i) The obligations of the registrant hereunder shall survive the termination of a registration.
 - (ii) A registrant that has its registration terminated by the City under this Ordinance may reapply for registration one (1) year after the termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the City.

~~(13)~~(12) When removal not authorized or required. In the event of termination of a registration, this Ordinance does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises

physical control over the communications facilities holds a valid certification or license with the governing federal or state agency, if required, for the provision of such service, and is registered with the City, if required.

~~(14)~~(13) Transfer or control, sale or assignment of assets. If a registrant transfers, sells or assigns its registration or its facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Ordinance. Written notice of any such transfer, sale or assignment shall be provided to the City within 20 days of the effective closing date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, and is in compliance with the provisions of this Ordinance, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Ordinance as it may have been amended, then the transferee, buyer or assignee shall register as provided in this Ordinance within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate City officials that the transferee, buyer or assignee is the new applicant.

~~(15)~~(14) Pledges in trust or mortgages of the registrant may be made to any person with notice to the City. Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the City under this Ordinance and applicable law.

~~(16)~~(15) City makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications facilities, and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this Ordinance shall affect the City's authority to add, vacate or abandon public rights-of-way, and the City makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

~~(17)~~(16) Conditional use of public rights-of-way.

(a) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the City for such activities as may be required by applicable law.

(b) To the extent that any person or registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the City, such person or registrant shall make no claim, nor assert any right which will impede the lawful exercise of the City's rights, including requiring the removal of such facilities from the public rights-of-way of the City, regardless

of the effect on registrant's ability to place or maintain its own communications facilities in public rights-of-way of the City.

Sec. 36-131. – Requirement of a permit.

(a) In accordance with applicable law, City ordinances, codes and regulations, including this Ordinance, a right-of-way use permit issued by the City shall be required for a communications services provider, communications facility provider or a pass-through provider to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this Ordinance. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or to maintain a communications facility in the public rights-of-way until all applicable permits have been issued by the City or other appropriate authority. Registrant shall comply with all City requirements for issuing permits, including reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The City may issue a blanket permit to cover certain activities that may otherwise require individual permits or may impose lesser requirements. Requests for ancillary permits required to operate a communications facility, including but not limited to electrical permits, shall be processed pursuant to the City's rules and regulations.

(b) Limited Exceptions to Permit Requirement.

(1) A registrant that is in compliance with this Ordinance shall be allowed to perform routine maintenance, service restoration work on existing facilities, or repair work, including but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers without a permit. **In addition, a registrant that is in compliance with this Ordinance shall be allowed to maintain, repair, replace, extend, or upgrade existing aerial wireline communications facilities on utility poles, or for aerial wireline facilities between existing wireline communications facility attachments on utility poles, without first obtaining a permit.** Prior to performing any excavation work, a registrant performing work without a permit is encouraged to obtain photographic or video documentation of the work, including depiction of the area of the public rights-of-way impacted. The term EMERGENCY shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the service restoration work or repair work and shall apply for a permit if such activity required a permit under this Ordinance within 30 days. Any maintenance of traffic required for service restoration or repair work shall meet the requirements of the latest edition of the FDOT 600 Series Standard Drawings and the Manual on Uniform Traffic Devices.

(2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way without a permit if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation or utilities in the public rights-of-way. In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the City

identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. If routine maintenance requires the closure of the public rights-of-way regardless of the duration, a road or sidewalk closure permit consistent with the City's rules and regulations shall be required unless the registrant is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. In such case, the County will require notice of such work within 30 days after restoration and will require an after-the-fact permit for any work that would have required a permit. As-built plans shall be provided to the City within ten (10) business days. A registrant shall be allowed to perform maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way without first obtaining a permit. All underground work or excavation without a permit shall be photographed and videotaped, and such photograph and videotape documentation shall be provided to the City upon request or, if not requested, within ten (10) business days.

(3) A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size. If such replacement will require the closure of a rights-of-way, the registrant shall obtain an appropriate road or sidewalk closure permit consistent with the City's rules and regulations. A registrant shall provide 48 hours' notice to the City prior to such work being done. ~~As-built plans shall be provided to the City within ten (10) business days of the completion of the work.~~

(4) A registrant shall be allowed to place or to maintain a service drop within the public rights-of-way without first obtaining a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights-of-way.

~~(5) — A permit shall not be required for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under F.S. ch. 202. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, the registrant shall submit a notarized letter to the City from or on behalf of the communications services provider, which shall be effective upon filing, attesting that the micro wireless facility's dimensions comply with F.S. § 337.401(7) and this Ordinance. A registrant's submission to demonstrate a micro wireless facility's dimensions may apply to all of the same, substantially similar, or small size micro wireless facilities sought to be placed in the public rights-of-way by such registrant. If a facility is installed by claiming that it is exempt because it constitutes a micro wireless facility and it is later determined that its dimensions do not meet F.S. §337.401(7), the City shall have the right to remove the facility and pursue a code enforcement violation for the intentional misrepresentation of the equipment installed. the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way. As-built plans shall be provided to the City within ten (10) business days.~~

~~(6) —~~

~~(7)(5)~~ Notwithstanding the exceptions to permit requirements contained in this subsection, a registrant shall obtain from the City a right-of-way permit for work that involves excavation, closure

Commented [A16]: Per 337.401(7)(e), the City may not require additional filing or other information to deploy these facilities

Commented [A17R17]: We are just asking for the company to provide us plans that show where the POLE is located and where the support wiring and additional equipment is located so that it can be documented to avoid conflicts in the future.

Commented [A18]: Micro wireless facilities are exempt from permitting review. This provision establishes a defacto approval process that is not required and expressly prohibited under 337.401(7)(h).

Commented [A19R19]: We were just looking for something to let us know what kind of work was being done. I have changed the language to retroactive enforcement to comply with your comment.

of a sidewalk regardless how temporary, or closure of a vehicular lane or parking lane regardless how temporary, unless the registrant is a communications services provider that is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, including but not

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limited to, the requirement to notify Sunshine 811 prior to any excavation or demolition activities in accordance with F.S. ch. 556, and to comply with the City Code. In such instance, to the extent not inconsistent with the 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual, the communications services provider shall provide information acceptable to the City as to the service restoration work and shall provide reasonable advance notice to the City so that the City may have an observer present. The City may require a specific method of excavation and a maintenance of traffic or sidewalk closure plan, as applicable. In addition, the registrant shall file for an after the fact permit within 30 days after completing restoration of the public rights-of-way. A registrant performing work without a permit shall ensure that the work is photographed and videotaped, including of the area of the public rights-of-way impacted, and such photograph and videotape documentation shall be provided to the City upon request or, if not requested, with the after the fact permit application.

- (c) The City Manager may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies as set forth in this Ordinance and applicable law.

Sec. 36-132. - Permit information requirements and review procedures.

- (a) Pre-submittal meeting. To minimize issues related to a permit request, prior to submitting materials for a permit request, ~~which does not include an application for a small wireless facility or a new utility pole to support a small wireless facility,~~ a registrant ~~shall~~ may conduct a pre-submittal meeting with the City to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way. The City shall undertake efforts to accommodate a registrant's request for a pre-submittal meeting either in person or electronic communications within ten (10) business days. ~~At a registrant's request, the City, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this Ordinance. In no event shall the requirement of a pre-submission meeting be waived for a permit request that involves excavation of over 50 feet of public rights-of way. The requirement of a pre-submittal meeting does not apply to applications. However, even if a pre-submittal meeting may not be required under applicable law, Registrants are strongly encouraged to engage in a pre-submittal meeting. A pre-submittal meeting, whether required herein or voluntary on the part of a registrant, shall not commence the time frames provided herein for City review and processing of a request or an application.~~

- (b) Requirements for all communications facilities in the public rights-of-way. As part of any permit application or request to place or maintain any facility pursuant to this Ordinance in the public rights-of-

Commented [A20]: Section 337.401(3)(a) and (g), provides that general regulations must be generally applicable, non-discriminatory and competitively neutral.

Commented [A21R21]: I need an explanation why this is not neutral. This is at the registrants request. If you want me to just say that it can never be waived, I will but that will be more difficult for you.

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way, a registrant or a registrant's agent or contractor shall complete a permit form provided by the City that, at a minimum, includes the following information:

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- (1) If the person seeking the permit is not the registrant, a statement of authority by the registrant to act on behalf of the registrant. In addition, if the person seeking the permit is a contractor, the contractor's license or registration and contractor's insurance information confirming the contractor's authority to perform construction in the City and statements as to whether the contractor has any open permits with the City, and if so, the permit identification number or information.
- (2) Confirmation ~~that the registrant or person seeking the permit engaged in a pre-submittal meeting, if required, or such meeting was waived by the City and~~ that the registrant has an effective registration with the City, and is otherwise in compliance with the City Code.
- (3) Engineering plan. An engineering plan signed and sealed by a licensed engineer, that includes the following:
 - (a) Except for applications to collocate small wireless facilities on existing utility poles in the public rights-of-way, an applicant shall demonstrate that the proposed location of the facility or utility pole is within the public rights-of-way, unless waived by the City in its sole discretion, pursuant to an applicant's or requester's attestation that the proposed facility is located with the public rights-of-way;
 - (b) The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, camouflage design, and concealment features of the proposed facility;
 - (c) The Global Positioning System (GPS) coordinates of the proposed Utility Pole. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six (6) decimal point precision or as otherwise required by the City;
 - (d) Whether the proposed facility is proposed within a location subject to restrictions pursuant to this Ordinance;
 - (e) For new communications facilities and extensions of existing communications facilities that require a permit, within a fifty (50) foot radius, a sketch showing pavement, sidewalks, driveways, ramps, trees, ~~below-grade utilities, and other above-grade and below-grade structures and~~ facilities located within the public rights-of-way ~~and the distances from the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way; If the applicant fails or refuses to voluntarily provide a sketch showing below grade equipment, structures or impacts, then the City will not take any~~

Commented [A22]: See comment above in 132(A)

Commented [A23]: See Section 337.401(3)(a) and (7)(d).2, F.S. which limits this information to above-grade facilities.

Commented [A24]: This requirement exceeds what the city may require pursuant to Section 337.401(3)(a), 7)(c) and (7)(d).2 for communications facilities.

Commented [A25R25]: Please see my additions. I will be happy to delete your concerns but will need to add the statement.

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action to protect anything below grade from other impacts for stormwater, water, sewer, utilities, cable, fiber, or any other intrusion. Further, the applicant shall be liable for damage to any other below grade equipment damaged by its failure to participate in the review.

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- (f) Sufficient specificity demonstrating compliance with applicable codes, as defined herein and as may be amended;
 - (g) If applicable, the routes of all transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);
 - (h) Sufficient details demonstrating that the proposed facility will not materially interfere with the safe operation of traffic control equipment;
 - (i) Sufficient details demonstrating that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook;
 - (j) Sufficient details demonstrating that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and
- (4) Trees or landscaping proposed to be removed or impacted upon the placement or maintenance of the proposed facility.
 - (5) Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.
 - (6) Description of installation or construction. A description of the method by which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques).
 - (7) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
 - (8) Temporary Traffic Control (TTC) plan. The applicant shall provide a temporary traffic lane closure and Temporary Traffic Control (TTC), if appropriate, to accommodate placement or maintenance of the facility.
 - (9) Restoration plan and estimated cost of restoration of the public rights-of-way. A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way by a licensed engineer. Such good faith estimate shall be accepted by the City unless the City determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be

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replaced. Tree or landscaping removal shown on the permit shall not be considered damage or impairment to be restored to the original condition provided the applicant or requester complies with the approved mitigation plan, if any.

(10) Timetable for construction or installation. The timetable for construction, placement or maintenance of the proposed facility or each phase thereof.

(11) Indemnification. A statement shall be included with the permit application or request that by execution of the application or request and by filing for the permit, the registrant shall be bound to the City with respect to the indemnification provisions set forth in this Ordinance.

(12) Airport airspace protection. If applicable, certification of compliance with F.S. ch. 333 and all City, State and federal laws and regulations, as amended, pertaining to airport airspace protections.

(13) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an authorized representative of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine (9) months after the date the application is approved.

(14) Pole attachment agreement. If applicable for the proposed facility, except for registrants whose pole attachments are regulated by 47 U.S.C. § 224, the registrant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the registrant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the City, and indicating the registrant is authorized to install its facility on the identified utility pole. By submitting the City's permit form, the registrant certifies to the City that it has authority from the utility pole owner to collocate its facility.

(15) Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the height and GPS location of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade in place within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.

(16) If the permit request includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfies the applicable codes as well as codes and standards of the National Fire Protection Association.

(17) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility or utility pole in the public rights-of-way, the applicant shall provide the following:

(a) Documentation to the satisfaction of the City from a licensed engineer, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;

(b) Sufficient details demonstrating that the proposed small wireless facility or utility pole complies with the objective design standards set forth in this Ordinance. For a proposed ground-mounted small wireless facility, such information shall include whether the proposed small wireless facility includes a wrap that has been approved by the City or is of an architectural design that is substantially similar to other infrastructure in the area of the public rights-of-way or has been approved by the City.

(c) Accurate illustrative depiction of the proposed utility pole or small wireless facility and if applicable, as collocated on the utility pole.

(18) Applicable permit fees including reimbursement for City consultants, to the extent not inconsistent with applicable law. The City acknowledges that currently, applicable law does not allow the City to charge permit fees.

(19) Consolidated permit application and single application or request for multiple locations. A registrant may submit a single application or request to place or to maintain multiple facilities in the public rights-of-way, where it would be more efficient for the registrant and the City to address multiple facilities in one permit. An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application for each of the proposed small wireless facilities. In addition, prior to applying for a consolidated permit, the applicant is strongly encouraged to engage in a pre-submittal meeting with the City to discuss all proposed small wireless facilities. If the application includes multiple small wireless facilities, the City may separately address small wireless facility collocations for which incomplete information has been received or which are denied. Each proposed utility pole to be placed in the public rights-of-way for the collocation of a small wireless facility shall require a separate application, and each communications facility to be placed in the public rights-of-way except for the collocation of a small wireless facility, shall require a separate request unless the City consents at a pre-submission meeting to a single application or request for such multiple facilities.

(20) To the extent not inconsistent with applicable law, such additional information requested by the City reasonably necessary for the permit application or request.

(c) Application Review and Procedures for Small Wireless Facilities and Utility Poles for Collocation of Small Wireless Facilities.

(1) ~~Time periods within this subsection shall be extended for the period of time impacted by a force majeure event or by a declared State of Emergency by the City, Martin County, or Governor that impacts the City ("force majeure extension). If a registrant opposes a force majeure extension pursuant to this subsection, it shall notify the City within 24 hours of such extension becoming effective or the registrant shall be deemed to have consented to the extension. Except as otherwise provided herein, r~~ requests for permits for the placement of communications facilities in the public rights-of-way, including but not limited to backhaul facilities, shall be subject to the time frames and review procedures set forth in this subsection; requests shall be considered to be applications; and requesters shall be considered to be applicants for purposes of time frames as referenced in this subsection. The time frames and procedures herein shall not apply to other requests that do not involve the placement of communications facilities in the public rights-of-way, including but not limited to, request for permits to perform maintenance on existing communications facilities in the public rights-of-way.

(a) Unless extended by mutual consent of the applicant and City, within 14 days after receiving an application, the City Manager will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the City will specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within 14 days.

(b) Negotiation Process.

(1) Unless extended by mutual consent of the applicant and the City, within 14 days after the date of filing the application, the City may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative City utility pole or support structure or may place a new utility pole. The City and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request.

(2) At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the City of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.

(3) If an agreement is not reached, the applicant must notify the City of such non-agreement and the City must grant or deny the original application within 90 days after the date the application was filed unless extended by mutual consent of the applicant and City. ~~Failure of the applicant to so notify the City as required herein shall be~~ Failure of the applicant to notify the City of non-agreement within the 90 days set forth herein shall be treated by the City as a withdrawal of the submittal. ~~deemed to constitute the applicant's consent to the City's~~

Commented [A26]: Nothing in Section 337.401, F.S. provides for a variance of the stated timeframes for approval of any permit for a communications facility in the ROW. Section 337.401(3)(g) incorporates the review timeframes outlined in Section (7)(d).8-9, F.S for review of applications. Thus, the timeframe for consideration of any application for a permit for a communications facility in the ROW is the same regardless of the type of facility.

Commented [A27R27]: I do not have authority to remove this. I don't think it will ever be a problem but the City will have to face the challenge if that is the case.

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alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

Commented [A28]: Section 337.401(7) does not provide for any such notice requirement by an applicant.

(c) The City processes all applications on a nondiscriminatory basis. Unless the City and the applicant engage in negotiations as provided above, the City will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within 60 days after the receipt of a completed application.

(d) Extension of time. If the City and the applicant do not engage in negotiations, the applicant and City may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.

(e) Basis to Deny Applications. The City may deny an application for a proposed collocation of a small wireless facility or to place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed small wireless facility or utility pole to support a small wireless facility:

- (1) Materially interferes with the safe operation of traffic control equipment;
- (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- (4) Materially fails to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual;
- (5) Fails to comply with applicable codes;
- (6) Fails to comply with objective design standards set forth in this Ordinance; or

(f) Cure Procedure.

- (1) If the application or request is denied, the City will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the City denies the application or request.

Commented [A29]: Superfluous ambiguous language that exceeds the scope of Section 337.401(7)(d)11 FS. Applicable Codes is a defined Statutory term and is broader than just local building codes but does not include City Codes in general. The Statute defines the term to avoid ambiguity and ensure consistency throughout the State. Any violation of Applicable Codes also forms a statutory basis for denial.

(2) The registrant may cure the deficiencies identified by the City and resubmit the application or request within 30 days after the notice of denial is sent.

(3) If an attempt to cure is submitted by the registrant within such 30-day period, the City will approve or deny the revised application or request within 30 days after receipt of the revised application. If the registrant revises any information in the application or request other than to address expressly the deficiencies identified by the City, the registrant shall submit a new application or request and the denial of the pending application or request shall be final.

(4) The City's second and subsequent reviews of revised applications or requests will be limited to the deficiencies cited in the denial notice.

(g) A permit issued pursuant to an approved application or request to install a new communications facility shall remain in effect for one (1) year unless otherwise extended, suspended, or revoked by the City pursuant to this Ordinance. If a communications facility including a small wireless facility or utility pole is going to be installed without a permit pursuant to this Ordinance or applicable state or federal law, the applicant or requester shall nevertheless be required to have an effective registration and, comply with development standards set forth in Florida Statute §337.401 as well as all City Codes which are not contrary to State Regulations prior to performing construction.

(h) A permit from the City constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(2) Review Procedures.

(a) Time frames. The City shall review and process other requests that are not for the placement of communications facilities, including but not limited to, requests for a permit to perform maintenance or to remove facilities, consistent with time frames required under applicable law and the City's standard procedures.

(b) Review procedures for wireless facilities modifications pursuant to the Spectrum Act. A registrant may file an eligible facilities request to modify an existing tower or base

Commented [A30]: Consistent with our further objections later in this Draft Ordinance regarding Permanent Performance Bonds which are prohibited by Section 202.24 and Section 337.401(7)(d).12, F.S.

station in the public rights-of-way, that does not substantially change the physical dimensions of such tower or base station, pursuant to Section 6409(a) of the Spectrum Act of 2012, 47 U.S.C. § 1455(a), and FCC regulations adopted thereto, 47 C.F.R. § 1.6100, as amended. Such request shall include the following: (1) confirmation that the registrant possesses an effective registration and submitted a permanent performance bond with the City; (2) a statement that it is an eligible facilities request, (3) a report, signed and sealed by a licensed engineer, that addresses the factors set forth in the FCC regulations, including a description of proposed modifications and the factors regarding whether the proposed modifications constitute a substantial change, and (4) a copy of the permit for the existing tower or base station that is proposed to be modified. The City shall review such request pursuant to the procedures set forth in the FCC regulations, notwithstanding other provisions of this Ordinance. The procedures in this Ordinance for appeal shall apply.

(3) Suspension and Revocation of Permits.

(a) The City may order the suspension of placement and maintenance work under a permit and ultimately may suspend or revoke any permit, in the event of a material breach of the terms and conditions of any applicable codes, this Ordinance, State and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:

- (1) The violation of any material provision of the permit or applicable codes;
- (2) An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City;
- (3) Any material misrepresentation of fact in the process of permittee's request or application for a permit or registration;
- (4) The failure to maintain the required construction bond or ~~insurance~~similar financial instrument;
- (5) The failure to properly restore the public rights-of-way;
- (6) The failure to comply within the specified time with an order issued by the City;
- (7) The failure to register, renew a registration, or provide notice of transfer in accordance with this Ordinance;
- (8) The failure to relocate or remove facilities pursuant to this Ordinance and F.S. §§ 337.402, 337.403 and 337.404, as amended;
- (9) Conducting work in the public rights-of-way without a permit, if required.

(b) If the City determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes or this Ordinance, the City shall make a ~~written~~ demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the City may place additional or revised permit conditions on the permit following a substantial breach. ~~In addition, the City may refuse to issue new permits and may deny an application or request for a new permit to a registrant or registrant's contractor that has materially violated any provisions of a permit or applicable codes or this Ordinance, until such time as the registrant cures the violation to the satisfaction of the City, including paying any damages, costs or penalties that may have been assessed.~~

(c) Within thirty (30) days of receiving notification of the breach, the permittee shall contact the City and provide a plan, acceptable to the City. The City shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the City, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the City's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens the health, safety or welfare of persons or property.

(d) If a permit is revoked, the permittee shall reimburse the City for the City's reasonable costs, including restoration costs, administrative costs, and the cost of collection..

(e) The City Manager may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

(4) Requests for Waivers.

(a) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.

(b) A waiver may be granted by the City Manager in those circumstances where a competitively neutral use of the public rights-of-way is impaired by strict application of the requirements of this Ordinance, in violation of applicable law.

Commented [A31]: This language violates Section 337.401(7)(g) that prohibits an effective moratorium and is also not a stated basis for denial in Section 337.401(7)(d).11, F.S.

Commented [A32R32]: This is reasonable. It is only if it is determined that the applicant is in substantial breach of the permit. That is already the law in Stuart. For example, you can not get a permit to build a new front porch if you currently have an open code enforcement violation pending.

(c) A request for a waiver shall be filed either prior to or contemporaneously with the permit application. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:

- (1) A detailed explanation, with supporting engineering information by a Florida licensed engineer or other data, as to why a waiver from the requirements of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;
- (2) Nature and characteristics of the surrounding neighborhood;
- (3) Any special conditions and circumstances affecting the proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;
- (4) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
- (5) Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;
- (6) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq., and applicable codes;
- (7) A request for waiver of the objective design standards contained herein shall include a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole, or are technically infeasible with supporting information from a licensed engineer, or that the design standards impose an excessive expense on the registrant with information as to the additional costs of compliance with the standards and the registrant's anticipated revenue from the proposed facility or assets. The City shall grant or deny a request for a waiver of objective design standards within forty-five (45) days after receiving the request for waiver unless the applicant and City consent to an extension, subject to a force majeure event.
- (8) Any other information the City may reasonably require to process the request for waiver.

(d) Except for a request for a waiver of objective design standards, the City shall grant or deny a request for a waiver of any other provisions of the City Code pursuant to its standard procedures for requests for waivers or variance of its Code, consistent with applicable law. If a request for waiver or variance is not processed by the City within the time frame for granting or denying an application or

request for a permit, the City shall deny the permit application or request unless the City and the registrant consent to an applicable extension. In granting any waiver, the City may impose conditions to the extent the City determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public.

(e) Should a request for waiver, and ultimately a permit, be denied by the City, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Ordinance.

(5) Appeals.

(a) Final, written decisions of a designee of the City Manager, including but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration or denying a request for a waiver, or imposing costs or a fine, are subject to appeal to the City Manager. An appeal must be filed with the City Manager within thirty (30) days of the date of the final, written decision to be appealed. An appeal that is not timely filed as set forth herein shall be waived. The City Manager shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the City and no new information shall be considered. Subject to a force majeure event, the hearing shall occur within 30 days of the receipt of the appeal, unless waived by the applicant, and a written decision shall be rendered ~~within 2015 days of the hearing~~ pursuant to §337.401(7)(d)(9).

(b) An appeal from a decision of the City Manager or a hearing officer may be appealed to the City Commission within 30 days, by filing a written notice of appeal with the City Clerk and providing copies to the City Manager and the City Attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee to be established by administrative order of the City Manager. The City Commission may affirm, modify or reverse the decision of the City Manager. The City Manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the City commission. Nothing contained herein shall preclude the City Commission from seeking additional information prior to rendering a final decision. The decision of the City Commission shall be by resolution and a copy of the decision shall be forwarded to the City Manager and the appealing party. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the City Commission may appeal an adverse decision to the Circuit Court In And For Martin County or applicable federal district court. The party making the appeal shall be required to pay to the City Clerk a fee to be established by administrative order of the City Manager, to defray the costs of preparing the record on appeal. Said fee shall be effective upon approval by the Commission. To the extent required by applicable law, the City shall waive any claim or defense based on failure to exhaust administrative remedies if the City's administrative review is not complete within 45 days after a person files a complete request for review.

Commented [A33]: Revised to render timeframes consistent with Section 337.401(7)(d).9, F.S. of 45 days. See also last sentence in subsection (b) below which recognizes the 45 day time frame for appellate review.

Commented [A34R34]: I took the calculation out if the hearing is within 14 days of the request, then there is 31 days left pursuant to the statute.

Sec. 36-133. - Suspension of permits.

- (a) The city may suspend a permit for work in the public rights-of-way for one (1) or more of the following reasons, ~~subject to section 36-144 of this article:~~
- (1) Violation of permit conditions, including conditions set forth in the permit, this article, or other applicable city ordinances, codes, or regulations governing placement or maintenance of communications facilities in public rights-of-way;
 - (2) Misrepresentation or fraud by registrant in a registration or permit application to the city; ~~or~~
 - ~~(3) Failure to properly renew or ineffectiveness of the registration; or~~
 - ~~(4)(3) Failure to relocate or remove facilities as may be when it is lawfully required lawfully required by the city.~~
- (b) The building official shall provide notice and an opportunity to cure any violation of subsections (1) through (4) above, each of which shall be reasonable under the circumstances.

Sec. 36-144. - Performance construction bond BONDS and permanent performance bond.

- (a) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to this Ordinance, a registrant or contractor that applies for a permit on behalf of a registrant shall deposit with the City a performance construction bond acceptable to the City to secure the restoration of the public rights-of-way, and to ensure the registrant's or contractor's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the Code. The performance construction bond shall be conditioned upon the full and faithful compliance by the registrant or contractor with all requirements, duties, and obligations imposed by the permit and provisions of this Ordinance during and through completion of the placement or maintenance project. The performance construction bond shall be in an amount as determined by the City based on one-hundred ten percent (110%) of the estimated costs of the restoration of the public rights-of-way submitted by the registrant. For a consolidated permit, the registrant or contractor shall provide a performance construction bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event, shall be less than ten thousand dollars (\$10,000.00). ~~Notwithstanding any provision herein, the minimum amount of the performance construction bond for a new or replaced utility pole or small wireless facility over six (6) cubic feet shall be twenty-five thousand dollars (\$25,000.00).~~ The City shall not require a performance construction bond if the estimated cost of restoration of the public rights-of-way is less than one thousand dollars (\$1,000.00).
- (b) In the event a registrant or contractor subject to such a performance construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit or code, there shall be recoverable, from such construction bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or

Commented [A35]: This is not a valid basis to suspend an unrelated permit for work elsewhere in the ROW. See Section 337.401(7)(g).

Commented [A36R36]: If the City was widening a road and needed the equipment removed but the applicant refused and it went to court and the Judge entered an order that said the equipment needed to be removed.

Commented [A37]: This language should be deleted to ensure that the Draft Ordinance is nondiscriminatory and competitively neutral. The City is already covered by the estimated cost of the restoration of the ROW provided above.

Commented [A38R38]: I need you to explain your position so I understand it better. I think this is neutral.

abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.

(c) The performance construction bond shall be non-cancelable and shall be for a term of not less than one (1) year but not more than 18 months after the anticipated date of the later of completion of construction, restoration and City inspection. No less than one-year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant or contractor may request that the City remove the requirement to continue the performance construction bond. In accordance with the current standards of the City, and satisfaction of all obligations in accordance with the bond, the City shall return the performance construction bond without interest. Notwithstanding, the City shall require a new performance construction bond for any subsequent work performed in the public rights-of-way as required by this Ordinance. Notwithstanding this provision, to the extent required by applicable law, the City shall accept a letter of credit or similar financial instrument as a construction bond issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add the City to any existing bond, or other relevant financial instrument, and the City shall accept such proof of coverage without any conditions other than consent to venue in Martin County for purposes of any litigation to which the City is a party.

(1) No permit shall be issued prior to the effective date on the performance bond. If the applicant desires to maintain a performance bond, letter of credit or similar financial instrument as described in §337.401(7)(d)(12), the City shall allow the Applicant to maintain said Bond or Letter of Credit on with the City. Bonds or letters of credit currently on file with the City shall satisfy the requirements of this section.

(2) An application for a permit shall be deemed incomplete until such time as a satisfactory letter of credit or similar financial instrument has been received by the City which names the City and is in full force and effect.

(c) _____

Sec. 36-145. – Construction methods for placing or maintain communications facilities in public rights-of-way.

(a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes ~~and must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. For purpose of complying with the notice and approval requirements contained within the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, the registrant shall provide notice and seek approval from the City Manager.~~ All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas including maintenance of traffic.

(b) In connection with excavation in the public rights-of-way, the requirements of this Ordinance shall control to the extent of any conflict with inconsistent provision of the City Code.

Commented [A39]: A permanent performance bond violates State Law. Performance bonds are prohibited per Sections 337.401(7)(d)12 and 202.24(2)(b)1., Florida Statutes. In 2019, SB 1000 eliminated the performance bond and security fund option for local government contained in Section 337.401(7)(d)12 as follows: "An authority may adopt by ordinance provisions for insurance coverage, indemnification, ~~performance bonds, security funds,~~ force majeure, abandonment, authority liability, or authority warranties. . . . An authority may require a construction bond to secure restoration of the post-construction right-of-way to preconstruction condition. However, such bond must be limited to not more than 18 months after the construction to which the bond applies is completed."

Commented [A40]:
(d) Can you please provide information and clarification on the specific section of the FDOT UAM that provides for this requirement? To the extent the intent of this language seeks to impose regulatory approval over FDOT ROW, the language violates Section 337.401.(1) and (7)(d).5, F.S.

Commented [A41R41]: I removed

(c) In addition, in connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.

(d) To the extent not inconsistent with applicable codes, underground cables, where required, shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for the paved portion of roadways, sidewalks and driveway aprons a twenty-four-inch (24") to thirty-inch (30") depth of cover in all areas except the paved portion of roadways, sidewalks and driveway aprons, and shall have a three-foot (3') horizontal clearance from underground utilities and their appurtenances.

Below grade communication facility shall not be allowed under a swale or ditch unless such restriction is waived by the Public Works Operation Manager or City Manager with appropriate conditions of a permit that the registrant or permittee clean or re-excavate the swale or ditch to its appropriate grade prior to installation of the facility.

(e) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.

(f) Consistent with applicable codes and City regulations, the City may require the use of trenchless technology (i.e., directional bore method) or may prohibit underground missile boring for the installation of facilities underground in the public rights-of-way. The registrant shall be solely liable for the displacement, damage or destruction of any property, public rights-of-way, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The City may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this Ordinance and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the City.

(g) In an effort to minimize adverse impacts and disruption in the public rights-of-way and to other municipal improvements, the City may require a communications services provider to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the communications services provider's permit application. The City may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The City may provide a more definite time frame based on specific City construction or maintenance schedules. Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers to the extent consistent with the federal requirements of 47 U.S.C. § 224. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(h) Limits on excavation in restored rights-of-way. ~~To avoid continual disruption and degradation to the public rights-of-way and in the interest of public safety, an area of the public rights-of-way that has been subject to excavation and restored shall not be subject to re-excavation until at least two (2) years following the completion of such restoration, to the extent not inconsistent with applicable codes and~~

law, unless waived by the City. If the areas where the excavation is to occur has not been fully restored by a permittee, the subsequent permittee may apply for and the City may issue a permit that requires the subsequent permittee to restore the public rights-of-way to the original condition and to warrant such restoration consistent with this Ordinance. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way.

(i) Trees. A registrant shall comply with the requirements of the City's Land Development Regulations with respect to the proposed removal or disturbance of any trees on private property. A registrant shall not prune, remove or materially disturb trees during placement or maintenance of communications facilities, small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way, unless approved pursuant to an applicable permit issued by the City, to the extent not inconsistent with applicable law. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be disturbed or removed during placement or maintenance of communications facilities pursuant to a permit issued by the City. The City may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan.

(j) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the City's satisfaction upon inspection. Registrant shall warrant its restoration for a period of twelve (12) months after completion of such restoration. If the registrant fails to make such restoration within seven (7) calendar days after completion of construction, or such other time as may be required by the City, the City may, after written notice to the registrant, perform such restoration using City employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the City to the registrant. Consistent with the City Code, if the registrant fails to complete restoration work by the estimated date for completion listed in the permit, following notice to the registrant or permittee, the City shall have the right to restore the right-of-way and to charge the registrant or permittee for actual costs of such restoration work plus 25 percent of such costs for administrative expenses, to the extent not inconsistent with F.S. § 337.402, as it may be amended. The costs and administrative expenses shall not be eligible for credit against any other payments that may be owed by the registrant to the City. Consistent with the City Code, the City Manager shall make inspections to administer and enforce the provisions of this subsection. The registrant or permittee shall notify the City Manager 48 hours prior to commencing construction and at the time of completion of work under the permit. Upon completion, the City Manager shall inspect the work to determine whether the restoration has been acceptably completed. In such event, the City shall notify the applicant in writing that the 12-month restoration warranty period has begun.

(k) A registrant shall immediately notify the City of any damage to City utilities, City fiber or other City facilities as a result of a registrant's construction in the public rights-of-way. The registrant shall repair such damage at its expense within the time frame required by the City given the nature of the

Commented [A42]: This is beyond the scope of Section 337.401, F.S. The period of time specified (2 years) is also unreasonable and will severely limit the rollout of new technologies in the City. It is effectively discriminating against new entrants. The provision also would function as an impermissible moratorium against a subsequent carrier seeking to place facilities in the ROW. Such a moratorium is unlawful on its face in violation of Section 337.401(7)(g) and Section 337.401(7)(h), F.S. Furthermore, this express prohibition is discriminatory in violation of Section 337.401(3), F.S. It is also beyond the scope of applicable codes since it would not be adopted to implement a provision of Section 337.401(7), F.S. There is no provision in Section 337.401(7), F.S., and indeed in federal law, that would support such an action.

Commented [A43R43]: We need to discuss. I am willing to create other language but I have been instructed to have language to protect areas from being under construction during "season" or continually.

damage and impact on City services. In its discretion, the City may repair or arrange for the repair of such damage and charge such expense to the registrant.

(l) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the City to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon thirty (30) days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. § 337.403. The City may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.

(m) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended. Subject to F.S. § 337.403, whenever an order of the City requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the City may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. § 337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the City.

(n) Subject to F.S. § 337.403, whenever it shall be necessary for the City to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the City Commission to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. § 337.404.

(o) A final order of the City shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's construction bond or equivalent financial security.

(p) The City retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall attempt to notify the registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.

(q) The City shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. The City shall have access without charge to any manholes or hand holes at any time, of a communications services provider in which the City has facilities, provided the City has given such provider reasonable prior notice so that such provider can have trained personnel present when the accesses such manholes. Notwithstanding the

foregoing, the City, in the proper exercise of its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and hand holes without charge of such provider. In the event the City determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the City will provide registrant no less than three days written notice setting forth the violation and requesting correction.

(r) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, in the event there are any field changes from the permitted plans (when required), the registrant shall promptly provide revised plans and "as-builts" upon completion of any installation or construction. The plans shall be in a digitized PDF and CAD (Computer Aided Design) file formats, showing the two-dimensional location of the facilities, based on the City's geographical database or other format acceptable to the City. The registrant shall provide such plans at no cost to the City. The City shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended.

(s) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, fiber, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant. To the extent not inconsistent with applicable law, a registrant shall allow City facilities to be collocated within City's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and City and may be subjected to other City rights-of-way requirements. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the City and within said limits as same may from time to time be altered.

(t) A registrant shall, on the request of any person holding a permit issued by the City, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30-days advance written notice to arrange for such temporary relocation. If the City requests a temporary raising or lowering of a facility for a public purpose, the City shall not be charged for the temporary raising or lowering of the facility.

(u) This Ordinance does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(v) Abandonment. Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-way is to be abandoned, the provider shall notify the City no later than ninety (90) days from such determination, or no later than thirty (30) days

following such abandonment, whichever is sooner. The City may independently establish that a communications facility has been abandoned. In reaching such determination, the City may request documentation and/or affidavits from the communications services provider or registrant regarding the active use of the facility. If the provider or registrant fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant or communications services provider at its expense within thirty (30) days of receipt of notice from the City. Failure to remove an abandoned facility within the thirty (30) days' period shall be deemed to be the registrant's or communications provider's consent for the City to remove the facility at the registrant's or provider's expense or for the City to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection.

(w) If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

Sec. 36-146. - Existing communications facilities in public rights-of-way.

A communications services provider with an existing communications facility in the public rights-of-way of the city has sixty (60) days from the effective date of this article to provide registration pursuant to this article or be in violation thereof.

Sec. 36-147. - Insurance.

- (a) A registrant shall provide, pay for, and maintain satisfactory to the city the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the city. All liability policies shall provide that the city is an additional insured as to the activities under this article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the city annually. Thirty (30) days' advance written notice by mail, or ~~facsimile-email to the City Manager or Development Director~~ must be given to the city of any cancellation, ~~or intent not to renew, or in the event a reduction in the policy coverages brings it below the thresholds set forth in this section or reduction in the policy coverages~~, except for non-payment of premium in which a ten (10) days' notice shall apply. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.
- (b) The limits of coverage of insurance required shall be not less than the following:
- (1) Workers' Compensation and Employer's Liability Insurance Workers' Compensation-Florida Statutory Requirements Employer's Liability—\$1,000,000.00 limit each accident.
 - (2) Comprehensive general liability bodily injury and property damage—\$1,000,000.00 combined single limit each occurrence.

(3) Automobile liability bodily injury and property damage—\$1,000,000.00 combined single limit each accident.

~~(3)~~(4) This Ordinance shall not be construed to affect in any way the City's rights, privileges and immunities as set forth in F.S. § 768.28. Insurance under this Ordinance shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this Ordinance and subject to the remedies as set forth herein. Notwithstanding the foregoing, the City may, in its sole discretion, require increased or decreased levels of insurance.

Sec. 36-148. - Indemnification.

(17) Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, or otherwise caused by the registrant, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, provided however, that a registrant's obligations hereunder shall not extend to any damages caused solely by the negligence, gross negligence, or willful acts of the City and to the extent not inconsistent with applicable law. In no event shall the City be liable for any damage or destruction to a communications facility placed in the City public rights-of-way including on a City utility pole, to the extent not inconsistent with applicable law. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. City agrees to notify the registrant, in writing, within a reasonable time of City receiving notice, of any issue it determines may require indemnification. Nothing in this Ordinance shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost, if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Ordinance shall be construed or interpreted:

- i. as denying to either party any remedy or defense available to such party under the laws of the State of Florida;
- ii. as consent by the City to be sued; or

iii. ~~as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.~~

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the city, its officials, boards, members, agents, and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the city arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this article; provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence, or wanton or willful acts of the city. This provision includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceedings. The city agrees to notify the registrant, in writing, within a reasonable time of the city receiving notice of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict, or appearance of a conflict. Nothing contained in this section shall be construed or interpreted: (a) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

(b)(a) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

Sec. 36-149. - Development and objective design standards for the placement or maintenance of communications facilities in the public rights-of-way.

(a) Terms and conditions for collocation on City utility poles.

(1) The City utility poles ~~shall be regulated pursuant to~~ ~~do not constitute authority utility poles within the meaning of~~ F.S. § 337.401(7)(f). Accordingly, the City, in its discretion, may reject a registrant's request to collocate a communications facility on a City utility pole in the public rights-of-way ~~within the parameters set forth by Florida Statute~~. Any registrant allowed to collocate a communications facility on a City utility pole shall enter into an agreement with the City that is acceptable to the City Commission. The City shall not enter into an exclusive arrangement with any person for the right to attach equipment to City utility poles. The City reserves the right to enter into agreements for collocation on City utility poles in its discretion.

(2) Reservation of space on City utility poles. The City may reserve the useable space of the vertical pole component of all City utility poles in the public rights-of-way for future public safety uses. The City may allow a registrant to replace a City utility pole at the registrant's sole cost if necessary to accommodate the collocation of the small wireless facility and the City's use. The replaced pole shall continue to be owned by the City.

(3) ~~The rate to collocate a small wireless facility on a City utility pole in the public rights-of-way shall be negotiated between the City and registrant and may not exceed the amount set forth in Florida Statute F.S. § 337.401(7)(f). \$150 per pole annually.~~

Commented [A44]: I moved the indemnification from above to this location.

Commented [A45]: As with Insurance, the Indemnification provisions were already provided for in connection with a Registration in Section 36-130(d)(5) of the Draft Ordinance.

Commented [A46]: Revised to confirm with 337.401(7)(f)3 FS

Commented [A47]: This language needs to be rewritten to acknowledge the provisions of Section 337.401(7)(b).6 and .11 which defines what constitutes a "Utility Pole" and an "Authority Utility" and further Section 337.401(7)(f), F.S.

Commented [A48R48]: We talked about this but I was not sure if this language was acceptable to you so I left it and we can confirm later.

~~(4)~~(3) A collocation of a small wireless facility on a City utility pole shall comply with all applicable codes and this Ordinance, and shall not compromise the City utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.

~~(5)~~(4) A collocation of a small wireless facility on a City utility pole shall not affect the City's ability to remove or to replace the pole in its sole discretion. A City utility pole that has been partially removed or has been designated to be removed by the City shall not be available for collocation or repurpose for collocation. Within ~~thirty (30) days~~ ninety (90) days after receiving notification that the City intends to remove or to replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost. In the interest of public safety and safety of City employees, a City structure in the public rights-of-way used to support an avian structure or facility shall not be available for collocation or repurpose or replacement for collocation. A City building or City utility pole extending from a building in the public rights-of-way shall not be available for collocation, or repurpose or replacement for collocation.

Commented [A49]: Suggest a more reasonable timeframe to allow time to locate an alternate location and allow for permitting.

Commented [A50R50]: We can discuss but 90 is a long time. I can split the difference.

(b) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements unless waived by the City. In conjunction with granting such waiver, the City may require conditions on the permit approving such facility.

(1) A registrant shall comply with and abide by all applicable provisions of the state law and City ordinances, applicable codes and regulations, quasi-judicially approved conditions for approvals, settlement agreements, applicable contracts, applicable court orders, and applicable provisions of federal statutes, FCC regulations and PSC regulations in placing or maintaining a communications facility in the public rights-of-way. Wireless facilities shall be considered to be structures under the Florida Building Code, Building Risk Category IV, Structures, Chapter 16 Section 1620—1621, High Velocity Hurricane Zone Area.

(2) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual obstruction to the traveling public's the use of the public rights-of-way or the use of bicycle lanes or multipurpose trails. To avoid such visual obstructions, no utility poles for collocation of small wireless facilities or ground mounted small wireless facilities shall be located within traffic circles.

(3) For public safety purposes, aboveground communications facilities, including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on multipurpose trails.

(4) Communications facilities shall be placed between the property line and the curb line of a street and shall not be located within a clear zone.

(5) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights, accessibility and safety of property owners who abut any of the public rights-of-way. By way of example, the placement or maintenance of a

communications facility in the public rights-of-way shall not cause excessive noise or light levels in violation of Chapter 22, Art. III, Section 22-69, of the City Code, shall not impede ingress and egress to adjacent property, materially block views from or into a business or residence, or materially block visibility of address or other signage on abutting properties.

(6) A registrant shall not place or maintain its communications facilities to interfere, displace, damage or destroy any facilities, including but not limited to, the City drainage plan, sewers, ponds, gas or water mains, storm drains, pipes, cables or conduits of the City or any other person's facilities or utilities lawfully occupying the public rights-of-way of the City, unless waived by the City.

(7) The City may prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities and utilities in the proposed location of the public rights-of-way, to safely accommodate additional installations at any location, for the protection of existing facilities and utilities in the public rights-of-way, or to accommodate City plans for public improvements, other approved capital improvements projects as part of the City Comprehensive Plan, the City's smart technology or projects the City determines are in the public interest.

(8) Placement within Historic Downtown City of Stuart Geographic Area. Consistent with the City's Comprehensive Plan, to protect the history and character of the area designated as Historic Downtown City of Stuart, the City discourages and will not issue permits for following activities associated with facilities within the geographic area of historic downtown City, unless waived by the City **Manager**:

1. Excavation except to repair or to replace existing underground communications facilities;
2. Installation and maintenance of utility poles for the collocation of communications facilities, including small wireless facilities;
3. Installation and maintenance of small wireless facilities;
4. Installation and maintenance of micro wireless facilities;
5. Collocation of antenna; and
6. Installation and maintenance of ancillary services, including but not limited to, electric power for such facilities.

(9) Facilities to be installed **underground**:

- a) All facilities shall be subject to the City's non-discriminatory undergrounding requirements that prohibit above-ground structures and utilities in the public rights-of-way.

Commented [A51]: The City cannot wholesale prohibit the placement of communications services facilities within historic areas of the City. By prohibiting the placement of new wireless facilities, including SWF, the City is effectively prohibiting facilities in the ROW in violation of Section 337.401(3) and (7)(d)3, F.S. As an industry, we are sensitive to the unique aesthetic considerations involved within historic areas. However, an outright prohibition clearly violates federal law and Section 337.401(3).

Commented [A52]: Section 337.41(7)(i), F.S. outlines the procedures to be followed in the event the City elects to underground its facilities. This section needs to be rewritten to acknowledge these provisions. Please let us know if you would like us to provide language for your use that tracks the statute.

~~b) — Unless waived by the City, pursuant to the City's undergrounding project described in the recitals, all communications facilities shall be placed underground, to the extent that utilities have previously been placed underground or are programed to be placed underground.~~

~~c) — A registrant shall not place or maintain utility poles for the collocation of small wireless facilities or small wireless facilities in a location in the public rights-of-way where there are no existing electric or communications utility poles and where electric and communications utilities are required to be installed underground to the extent not inconsistent with applicable law.~~

~~b)~~ For purposes of this subsection, unless inconsistent with applicable law, adoption of a final resolution by the City Commission shall constitute an undergrounding requirement over any area of the public rights-of-way. This subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that if the City notifies the registrant of the micro wireless facility that aerial communications or electric distribution utilities will be converted to underground utilities, the registrant shall remove its micro wireless facility at its expense within the time frame required by the City.

~~c)~~ Conversion of overhead utilities to underground. No utility poles for the collocation of small wireless facilities, micro wireless facilities, or communications facilities shall be placed in a location in the public rights-of-way where the City Commission has determined that existing above ground electric and communications utilities should be removed and relocated underground. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the City's requirements to convert above ground utilities to underground. To comply with the City's undergrounding requirements, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within 60 days of being notified by the City that such facilities must be removed. The City shall have the right to remove such facilities at the registrant's expense if the registrant fails to do so. For small wireless facilities installed before the City adopts requirements that public utility lines in a particular area must be placed underground, the City, ~~in its discretion,~~ shall: (a) allow a wireless provider to maintain the small wireless facility in place subject to any applicable pole attachment agreement with the pole owner; or (b) allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with the objective design standards contained within this Ordinance.

~~d)~~ Notwithstanding the provisions of this subsection, the City may approve a permit for a new utility pole for collocation of a small wireless facility in an area where all public utility lines must be placed underground, if a wireless provider satisfies the following:

Commented [A53]: Revised to conform with the mandatory requirements of Section 337.401(7)(i) FS. There is no discretion in the statute.

- i. The wireless provider provides information from a licensed engineer that the City has not allowed structures to remain above ground that are reasonably available to the wireless provider for the collocation of small wireless facility and that may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;
- ii. The proposed utility pole otherwise complies with this Ordinance; and
- iii. The wireless provider provides information acceptable to the City from a licensed engineer that it is not reasonably able to provide wireless service by collocation on a remaining utility pole or other structure in the rights-of-way.

(10) Prohibition against placement in violation of OSHA or NESC or NERC rules and regulations. Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities shall not be placed in a location which violates rules and regulations set by Occupational Safety and Health Administration or the National Electrical Safety Code or the North American Electric Reliability Corporation standards. By way of example and not limitation, if required by such rules and regulations, a small wireless facility or utility pole intended to support the collocation of a small wireless facility may not be placed within a ten (10) foot radius of an electric distribution facility or within a twenty (20) foot radius of an electric transmission line.

(11) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.

(12) Placement in relation to adjacent uses of property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design standard, or such spaces do not exist in those locations on existing properties, new communication facilities and new utility poles for collocation of small wireless facilities ~~should endeavor shall~~ be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, ~~place of business, or any other principal use building located on property~~ that abuts the public rights-of-way.

(13) ~~Specific locations, capital improvement projects, districts and community redevelopment agency areas:~~

Commented [A54]: The City cannot wholesale prohibit the placement of communications services facilities within certain areas of the City. By prohibiting any deployment of SWF in this area, the City is in violation of Section 337.401(3) and (7)(d)3, F.S. by discriminating against wireless providers. Imposing regulations that are not competitively neutral as opposed to wireline communications services providers. As an industry, we are sensitive to the unique aesthetic considerations of the City in this ROW.

(a) — A registrant shall not place new utility poles for the collocation of small wireless facilities, small wireless facilities or micro wireless facilities within the public rights-of-way in such a location that would interfere with or impair the City's ability to pursue the projects identified within the City's Capital Improvement Program (CIP), unless waived by the City Manager. In conjunction with granting such waiver, the City may require conditions on the permit approving such facility so as to minimize the impact on the CIP. A registrant shall relocate at its expense, its utility poles, small wireless facilities and micro wireless facilities that need to be relocated to accommodate the City's CIP construction, to the extent not inconsistent with applicable law.

(b) — Small wireless facilities, utility poles for collocation of small wireless facilities and aerial communications facilities shall not be permitted in an area within the public rights-of-way that would interfere with a public art program. The City may notify a registrant to relocate at its cost a utility pole used for collocation of a small wireless facility or ground-mounted small wireless facility if such location interferes with a planned installation of art. A registrant that damages an object of art installed pursuant to an art program shall be responsible for the costs of the art and shall indemnify the City as required in this Ordinance. The City reserves the right to require an additional bond in conjunction with an application to place or maintain a communications facility in an area where an art object has been located.

~~(14)~~(13) A structure granted a permit and installed pursuant to this Ordinance shall comply with F.S. ch. 333, and City or federal regulations pertaining to airport airspace protections.

~~(15)~~(14) Historic preservation. This Ordinance does not limit the City's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws on or before April 1, 2017. Communications facilities shall not be permitted to be collocated on or to interfere with historic property or landmark that may be within or adjacent to the public rights-of-way unless waived by the City. The City shall not allow small wireless facilities, utility poles for the collocation of small wireless facilities or micro wireless facilities to be located in a manner that would impact negatively historic property or landmark unless waived by the City. Only Historic properties and landmarks ~~may be so~~ designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in the Florida or City Register of Historic Places, consistent with City codes, administrative rules, or regulations that were adopted by City ordinance on or before April 1, 2017, are subject to historic preservation regulations adopted on or before April 1, 2017, which are applicable to a historic area designation by the state or City. Any person seeking a permit from any governmental entity with jurisdiction over any historic property within the City's boundaries shall first submit a request for historic impact review with the appropriate historic governmental authority and shall provide a copy of such request to the City.

Commented [A55]: Revised to render language consistent with Section 337.401(7)(k).

(c) **OBJECTIVE DESIGN STANDARDS.**

(1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed in such a manner to ~~meet the maximize compatibility with the surrounding neighborhood and to minimize any negative visual impact on the surrounding neighborhood.~~ The objective design standards contained in this Ordinance regulating the location context, color, camouflaged design, and concealment of the proposed small wireless facility shall apply, unless waived by the City.

Commented [A56]: Revised to bring language into compliance with Section 337.401(7)(r), F.S.

(2) Applicants shall not place or maintain signage on communications facilities, including small wireless facilities or utility poles for collocation of small wireless facilities, in public rights-of-way, unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.

(3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, a permit issued by the City, or state and federal laws and regulations or as permitted by the City.

(4) Design standards for Utility Poles. Camouflaged design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall comply with applicable codes and shall meet the design standards contained in this subsection unless waived by the City.

(a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be in substantially the same location as the original utility pole.

(b) The replaced or restructured utility pole shall be substantially similar in finish, base and pole design, diameter, material and height as the original pole being replaced, unless the City requires a different design, color or composition to be consistent with applicable City standards for new utility poles.

(c) Unless waived by the City, the height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same right-of-way, measured from grade, in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet in the same public right-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, antennas, masts or other attachments to the utility pole.

(d) Unless waived by the City, a new utility pole shall be designed to be substantially similar in design to the predominant type of other utility poles at the proposed location in the same block or vicinity of the public rights-of-way. Such design aspects to follow

include the material, base, pole diameter and style, location and style of attachments, finish, and cap, as applicable. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed substantially similar to such light poles and to the extent consistent with location context regulations, equidistant between existing poles to the extent practicable. ~~Unless waived by the City, any such stealth utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the Code, at the expense of the registrant to the extent not inconsistent with applicable law. By way of example, if a registrant installs a utility pole for collocation of a small wireless facility to resemble a nearby light pole, the registrant is encouraged to include a light that is operated in the same manner as other light poles, at the registrant's expense.~~ The City Manager may, in the exercise of discretion, approve a collocation of a small wireless facility on a City light pole that would otherwise not qualify for collocation under this Ordinance.

(e) Notwithstanding this subsection, if the proposed location of a new utility pole for collocation of a small wireless facility is within a public right-of-way that is within a particular zoning district, planned unit development, community development district, community redevelopment agency, or a homeowners' association that has design standards applicable to utility poles, such proposed utility pole shall substantially comply with such design standards.

(f) If there are no existing utility poles in close proximity to a proposed new utility pole for collocation of a small wireless facility, a proposed new utility pole shall be required to demonstrate the factors required for a proposed utility pole where all utility lines must be located underground.

(g) This subsection does not authorize the installation of a new utility pole for collocation of a small wireless facility in a location that is otherwise prohibited pursuant to court order, applicable codes or, Florida law, ~~or City Code including this Ordinance~~.

(5) Camouflage design for collocation of small wireless facilities.

(a) Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a shroud. No exposed wires or cables are permitted.

(b) ~~If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side-mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility, to the extent not inconsistent with applicable law.~~ Unless consistent with the design of the utility pole, a small wireless facility shall not be

Commented [A57]: Imposition of this requirement is a violation of the in-kind prohibitions in both Section 337.401(3) and (7), F.S.

Commented [A58R58]: The word APPROVE demonstrates that it is so that the Manager can allow it to occur without commission action but I am happy to delete it all together and never have a circumstance that approves collocation on an exempt city light pole.

Commented [A59]: Mandating equipment configuration violates Section 337.401(7) Florida Statutes including but not limited to Section 337.401(7)(d)3. g. which states that "An authority may not: . . . g. Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits in this subsection;"

Commented [A60R60]: Who is making this comment. There are a lot of comments in this document that appear to be made by someone that is just angry at the world and refuses to read the language in context to the surrounding paragraphs

collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a utility pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.

(c) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.

(6) Small wireless facilities not collocated on utility poles or existing structures.

(a) Ground-mounted small wireless facilities up to 28 cu. ft. in dimension shall be located within a fifteen (15) foot radius of the existing structure or utility pole for the collocated small wireless facility.

(b) The ground-mounted small wireless facility shall be architecturally designed and of the same materials and color finish to be substantially similar to other at-grade infrastructure within 500 feet of the proposed location in the public rights-of-way such as waste receptacles or utility facilities. If the ground-mounted small wireless facility is not substantially similar to other at-grade infrastructure as set forth herein, the proposed small wireless facility shall be submitted to the City for review and approval.

~~(c) — To the extent not inconsistent with applicable codes, at the City's direction, ground-mounted small wireless facilities shall be enclosed in a wrap the design of which has been approved by the City staff. The registrant shall maintain the wrap in good condition at its sole cost and expense. The City may designate specific areas of the City where all ground-mounted small wireless facilities must be enclosed in a wrap.~~

~~(d) — To the extent not inconsistent with applicable codes, at the City's direction the registrant owner of a ground mounted small wireless facility or other ground mounted communications facilities in the public rights of way shall conceal the facility with landscaping and plantings. Landscaping and plantings pursuant to this subsection shall be subject to the City's approval and be maintained by the registrant at its sole cost and~~

Commented [A61]: Ground equipment is heat sensitive and wrapping such equipment can cause damage, create performance issues and void warranties. Suggest revising to "painted to match" rather than requiring a wrap.

Commented [A62R62]: OK. We can rewrite to PAINT

~~expense consistent with the Code for so long as the small wireless facility or communications facility remains in the public rights-of-way.~~

~~(e)(c) The City Manager or Development Director is authorized to create a manual showing figures of acceptable and unacceptable designs for facilities to be placed or maintained in the public rights-of-way.~~

(7) Development standards for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities.

(a) Dimensional limits. No communications facility other than small wireless facilities located aboveground, excluding utility poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed within the corporate limits of the City on any public rights-of-way unless:

(1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and

(2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and

(3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians at the proposed site and does not negatively impact or violate location and other regulations contained in this Ordinance: and

(4) The communications facility proposed by the communications provider does not otherwise create a hazard to the public health, safety and welfare.

~~(b) Notice to residential areas. Whenever a communications service provider subject to this subsection submits a permit application to locate communications equipment~~

Commented [A63]: If landscaping is not required of other communications facilities, the inclusion of it for SWF is discriminatory in violation of Section 337.401(3)(a). There is nothing significantly different in terms of technology of SWF from other ground mounted communications equipment. As such, this language should be stricken. Miami-Dade County studied this issue and declined to require landscaping. We can provide the memo and back up for such recommendation upon request.

Commented [A64R64]: Send me the memo. In addition, what if landscaping is required for other facilities?

Commented [A65]: Section 337.401(7)(r) provides that any objective design standards must be adopted by Ordinance. Further Section 337.401(7)(d).3.g which prohibits mandating the size and configuration of the SWF equipment.

Commented [A66R66]: I am deleting this. I don't want the burden to be on the City. The Applicants will have to guess.

~~which exceeds the dimensional limits in this subsection within residentially zoned districts in the City, the applicant shall provide notice by posting an 18" x 24" sign, satisfactory to the City, at the proposed location advising residents that they may review the permit application at the City and provide their comments to the City. The sign shall be posted a minimum of 30 days prior to any decision being made on the permit application to allow adequate time for input by residents and so as not to unduly delay the processing of any application.~~

Commented [A67]: This is reasonable

- (5) Small wireless facilities may not displace any existing street tree or landscape features unless:

Commented [A68]: This language should be deleted as violative of the notice provisions in Section 337.401(7)(d).3.f, F.S.

Commented [A69R69]: It is not in violation if the equipment exceeds the dimensional limits

- a) such displaced street tree or landscaping is replaced with native and/or trees, plants or other landscape features approved by the City, and
- b) the applicant submits and adheres to a landscape maintenance plan or agrees to pay an appropriate in-lieu fee for the maintenance costs.

Commented [A70]: This doesn't appear to be the appropriate place in the ordinance for this provision because (7)(a) only applies to communications facilities other than small wireless facilities.

Sec. 36-151. - Abandonment of a communications facility.

- (a) At such time that a communications facility owned by a registrant in public rights-of-way ceases to be active for longer than thirty (30) days, the registrant shall notify the city within ninety (90) days.

Commented [A71]: A Security fund requirement violates State Law. Security funds are prohibited per Sections 337.401(7)(d)12 and 202.24(2)(b)1., Florida Statutes. In 2019, SB 1000 eliminated the performance bond and security fund option for local government contained in Section 337.401(7)(d)12 as follows: "An authority may adopt by ordinance provisions for insurance coverage, indemnification, ~~performance bonds, security funds,~~ force majeure, abandonment, authority liability, or authority warranties. . . . An authority may require a construction bond to secure restoration of the post construction right-of-way to preconstruction condition. However, such bond must be limited to not more than 18 months after the construction to which the bond applies is completed."

- (b) The city may direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the city determines that the abandoned facility's presence interferes with the public health, safety, or welfare, which shall include, but shall not be limited to, a determination that such facility: (a) compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way; (b) prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or (c) creates a maintenance condition that is disruptive to the use of the public rights-of-way. In the event of (b), the city may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.
- (c) In the event the city does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city or another person at such third party's cost.
- (d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.

Sec. 36-152. - Reservation of rights and remedies.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this article and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law.
- (c) The adoption of this article is not intended to affect any rights or defenses of the city or a communications services provider under any existing franchise, license, or other agreements with a communications services provider.
- (d) Nothing in this article shall affect the remedies the city or the registrant has available under applicable law.
- (e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

Sec. 36-153. - Enforcement Remedies.

(a) Nothing in this Ordinance shall affect or limit the remedies the City has available under applicable law. In addition to any other remedies available at law, including but not limited to F.S. §§ 166.0415 (municipalities) and ch. 162, (municipalities and counties), or equity or provided in this section, the City may apply any one or combination of the following remedies in the event a registrant violates this Ordinance, or applicable local law or order related to the public rights-of-way.

(b) In addition to the City's ability to terminate a registration pursuant to this Ordinance or to deny, suspend or revoke permits, the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible person to the City in an amount of not less than \$100.00 per day or part thereof that the violation continues. A registrant's or person's failure to obtain a permit before commencing work, except

where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the City in an amount of not less than \$1,000.00 or maximum amount allowed under applicable law, per day or part thereof that the violation continues.

(c) In addition to or instead of any other remedy, the City may seek legal or equitable relief from any court of competent jurisdiction.

(d) Before imposing a fine, the City shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the person shall have 30 days to either:

i. Cure the violation to the City's satisfaction, and the City shall make good faith reasonable efforts to assist in resolving the violation; or

ii. File an appeal with the City to contest the alleged violation pursuant to this Section, which shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30-day period, the City may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(e) In determining which remedy or remedies are appropriate, the City or Special Magistrate shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required to prevent further violations, and such other matters as the City or Special Magistrate determines are appropriate to the public interest.

(f) Failure of the City to enforce any requirements of this Ordinance shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type, or to seek appropriate enforcement remedies.

(g) In any proceeding before the City where there exists an issue with respect to a registrant's performance of its obligations pursuant to this Ordinance, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The City may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Section.

(h) Force majeure. In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a force majeure cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to cure or correct any such inability to comply expeditiously.

Secs. 36-155 through 36-173. – Reserved.