

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 6, 2017

Consent Regular
 Ordinance Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF


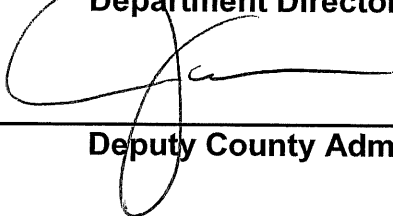
Motion and Title: Staff recommends motion to: **A) approve** Agreement with The Morikami, Inc., a Florida not-for profit corporation, defining and clarifying roles pertaining to the funding, management, operation and use of the Morikami Museum and Japanese Gardens ("Museum"); and

B) authorize staff to prepare and issue a request for proposal (RFP) to construct and operate an authentic Japanese Inn (Ryokan) at the Museum in accordance with the approved Master Plan.

Summary: The Museum is owned by the County and is operated by the Parks and Recreation Department in cooperation with The Morikami, Inc. ("Corporation"), whose purpose is to support the overall mission and operations of the Museum. The Museum includes a theater, café, exhibit space, library, offices, gift shop, and 16 acres of Japanese Gardens and is accredited by the American Alliance of Museums. Annual admissions at the Museum in FY 2016 were 116,974, with annual revenue of \$1.4M. On January 12, 1999, Palm Beach County ("County") and the Corporation entered into a revised Agreement (R99-78D), superseding Agreement R88-1675D. Since then, the complexity, size and scope of the Museum's operation has changed significantly. As a result, the agreement between the County and the Corporation must be updated to address the complexity of the operation, to ensure continued accreditation of the Museum, and to ensure that best practices are followed by the County and the Corporation in their partnership at the Museum. While some of the changes are ministerial in nature, other changes are related to: clearly defining the scope of services so that the County and Corporation understand the roles of their respective organizations, the Museum's permanent collection and artifacts custody and policy, and the duties and responsibilities of the Museum Director. The Corporation has partnered with the County for over 25 years and has provided financial, operational, and advisory support to the Museum. This Agreement builds on the historic partnership between the County and the Corporation.

In May of 2013, the Board initially authorized staff to prepare and issue an RFP to determine if there are groups interested in development of a Japanese Inn and Spa (Ryokan) and to obtain further information regarding development concepts. (Continued) District 5 (AH)

- Attachments:** 1. Agreement between Palm Beach County and The Morikami, Inc.
2. Morikami Conceptual Master Plan
3. May 7, 2013, BCC Agenda Item #4.D.2

Recommended by:	 _____ Department Director	<u>5-12-17</u> _____ Date
Approved by:	 _____ Deputy County Administrator	<u>5-26-17</u> _____ Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>				

Is Item Included in Current Budget? Yes No
 Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ / Revenue Source _____ Program _____

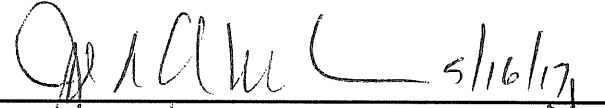
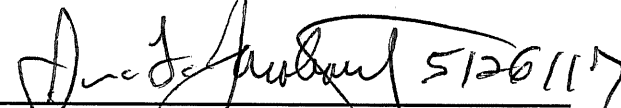
B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

<p><u></u> 5/16/17 OFMB JEX 5/15 QAM 5/16</p>	<p><u></u> 5/26/17 Contract Development & Control 5/25/17</p>
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B. Legal Sufficiency:

Anne Helgenst 5-26-17
 Assistant County Attorney

C. Other Departmental Review:

 Department Director

This summary is not to be used as a basis for payment

Summary Continued.

Prior to issuing the RFP, the Board approved the long standing Morikami Park Master Plan inclusive of a Ryokan in 2014 and a zoning change and comprehensive plan amendment to permit a Ryokan in 2015. The issuance of an RFP was postponed due to other priorities during 2016. Staff now feels it is the appropriate time to prepare and issue the RFP for the development and operation of a Ryokan at the Morikami Museum and Gardens.

Background and Policy Issues: In the 1970s, the late George Morikami donated land to Palm Beach County and the State of Florida for the construction of a public park. The County opened the first phase of the park in 1977 on 40 acres which included a traditional Japanese residence and a modern garden.

In 1993, a 32,000 square foot museum opened featuring a theater, café, exhibit space, library, offices and a museum store. Between 1999 and 2001, the Japanese Gardens were created on 16 acres adjoining the Museum. The Corporation has partnered with the County for over 20 years and has provided financial, operational, and advisory support to the Museum. The annual financial support provided by the Corporation has grown to \$3.6 million, inclusive of the employment of a staff of 33 that support the Museum's operations. Additionally, the Corporation manages an endowment which is currently valued at over \$6 million. The Board of County Commissioners recently approved a revised master plan for the future development of the Museum. The Corporation will be an important financial and advisory partner in the plans to complete the components of the Master Plan. The County and the Corporation are presently working under an agreement that was last updated in 1999. Since that time, the size and scope of the Museum operation has grown significantly as has the complexity of the operation. As a result, the agreement between the County and the Corporation must be updated to address the complexity of the operation, to ensure continued accreditation of the Museum, and to ensure that best practices are followed by the County and the Corporation in their partnership at the Museum. This Agreement builds on the historic partnership between the County and the Corporation.

Over the past 38 years, various master plans have been created for the Museum and included future amenities such as an expanded Bonsai Garden, Artisan Village, expanded exhibit space and a Japanese Inn and Spa or Ryokan. The Department supports a Ryokan on park property because it will add to the cultural experience, increase our marketing reach and economic impact, and provide financial support to the County. The Ryokan project is supported by the Alliance of Delray Residential Associations, the Cultural Council and the Tourist Development Council. Staff seeks confirmation of the Board's prior authorization to prepare and issue an RFP for the development and operation of a Ryokan within Morikami Park.

**AGREEMENT BETWEEN PALM BEACH COUNTY AND THE MORIKAMI, INC.
FOR THE FUNDING, SUPPORT AND USE OF THE MORIKAMI MUSEUM AND
JAPANESE GARDENS**

THIS AGREEMENT is made and entered into this _____ day of _____, 2017, by and between Palm Beach County, a political subdivision of the State of Florida, (the "County"), and The Morikami, Inc., a Florida not-for-profit corporation (the "Corporation").

WITNESSETH:

WHEREAS, the County owns and operates The Morikami Museum and Japanese Gardens an institution dedicated to the interpretation of Japanese culture; and

WHEREAS, the Corporation was established as a private non-profit corporation to support the Morikami Museum and Japanese Gardens; and

WHEREAS, on January 12, 1999, the County and the Corporation entered into an Agreement (R-99-78D) providing for the management and operation of the museum buildings and surrounding gardens and property, collectively referred to as the "Museum Premises"; and

WHEREAS, the County and the Corporation desire to clearly define their respective roles for the effective and efficient support, management, operation, and use of said Museum Premises; and

WHEREAS, the County and the Corporation desire to enter into this Agreement which shall supersede and replace Agreement R-99-78D in its entirety.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

**Article 1
Recitals**

The recitals as set forth above are true and correct and are reaffirmed as if specifically stated herein.

Article II. Definitions

2.01 “**Artifact**” means any item of historical, artistic or cultural value, related to history or prehistory, used in the operation of the Morikami Museum and Japanese Gardens.

2.02 “**Board of Trustees**” means the Board of Trustees of The Morikami, Inc.

2.03 “**Cafe**” means the Cornell Café, an eating place within the Museum Premises as depicted on Exhibit “A” attached hereto and incorporated herein.

2.04 “**Collections Policy**” means The Morikami Museum Collections Management Policy of the County to govern the acquisition, accessioning, use and deaccessioning of Artifacts.

2.05 “**Curator**” means a highly specialized expert, who assumes responsibility for the overall care, development, and interpretation of the Morikami Museum’s permanent collection. The Curator makes recommendations for acquiring and deaccessioning artifacts per the collections policy.

2.06 “**Department**” means The Palm Beach County Parks and Recreation Department, located at 2700 Sixth Avenue, South, Lake Worth, Florida 33461.

2.07 “**Development Director**” means the Institutional Advancement Director or the most senior fundraising employee of the Corporation.

2.08 “**Director**” means the Director of the Palm Beach County Parks and Recreation Department, a Palm Beach County employee under the direction of the County Administrator.

2.09 “**Display**” means the exhibit of artifacts or other objects.

2.10 “**Exhibit**” means any device, case, stand, visual aide, artistic rendition or visual presentation that is designed to display, house, describe or reproduce any Artifact or information of historic value, that is used in the operation of the Morikami Museum and Japanese Gardens and that is not permanently and irremovably attached to or made a part of the Museum Premises

2.11 “**Exhibition**” means an assemblage of objects of artistic, historical, scientific, or technological nature, through which visitors move from unit to unit in a sequence designed to be meaningful instructionally and/or aesthetically

2.12 **“Fixture”** means any appurtenance, improvement, device or article permanently attached to the interior or exterior of the Museum Premises, and does not include Artifacts, Exhibits or moveable lighting for Exhibits.

2.13 **“Fundraising”** the primary function of the Board of Trustees includes, but is not limited to, any campaign, drive, effort, program or special event, conducted by the Corporation that generate funds over and above the Museum Proceeds. Fundraising shall include without limitation gifts, donations, grants, sponsorships, and other routine solicitation efforts by the Corporation.

2.14 **“Gardens”** means all landscaped areas within Morikami Museum and Japanese Gardens and Park or on the Museum Premises created for aesthetic and educational purposes as a living exhibit to reflect the ideals and practices of Japanese garden design. Gardens include dry landscape elements at the Morikami Park’s entrance, landscaping immediately adjacent to the Museum, the entrance and landscaping within the fence and surrounding the pond.

2.15 **“Master Plan”** means the conceptual Master Plan for the future development of Museum Premises, developed by the County with input from the Corporation

2.16 **“Morikami Museum and Japanese Gardens”** means the institution owned and operated by Palm Beach County, located in Morikami Park that consists of the physical premises on which the Museum and the Gardens are situated.

2.17 **“Morikami Park”** means the parcels of land on Exhibit **“B”**.

2.18 **“Museum”** means the Morikami principal museum building, the Oki Education Building and Yamato-Kan building located on the Museum Premises owned and operated by the County and supported by the Corporation in accordance with the terms and conditions of and for the purposes set forth in this Agreement.

2.19 **“Museum Director”** means the Administrator/Director of Morikami Park, inclusive of the Morikami Museum and Japanese Gardens, a Palm Beach County employee under the direction of and appointed by the Director of the Department of Parks and Recreation.

2.20 **“Museum Premises”** depicted on Exhibit **“A”** means the real estate and improvements encompassing the Museum, Japanese Gardens, Oki Education building and the Caretaker Maintenance Pavilion located at 4000 Morikami Park Road, Delray Beach, Florida 33446, and includes all adjacent outdoor improvements, including its gardens, cafe, pavilions, and all exterior and interior improvements and Fixtures now in place or from time to time put in place by the County or Corporation. Exhibit **“B”** illustrates the location of the Museum Premises and its components within the site of the Morikami Park.

2.21 **“Museum Proceeds”** means the admission fees to the Museum and Gardens charged by the County.

2.22 **“Museum Store”** means a designated space used to sell merchandise that supports the museum’s mission within the Museum Premises as depicted on the Museum floor plan, attached hereto as Exhibit “A”, or any additional space as may be agreed upon by the Director.

2.23 **“Permanent Collection”** means those artifacts that have been acquired by the County or Corporation that relate directly to the purpose of the Morikami Museum and Japanese Gardens, including works of art and other objects, botanical specimens trained as bonsai, and which are collected and preserved because of their cultural, historical, aesthetic and/or educational importance, or their potential value as reference materials. Artifacts accessioned into the permanent collection are catalog-documented, preserved, and managed according to prescribed procedures, meeting current American Alliance of Museums’ professional museum standards.

2.24 **“Personal Property”** means property of a personal or movable nature (including, but not limited to furnishings, equipment and supplies), as opposed to property of a freehold nature.

2.25 **“Tangible Object”** means a three-dimensional Artifact or other object in the custody of the County or the Corporation that has intrinsic historical, artistic, scientific, or cultural value, and is distinct from “work of art” which may refer to an intangible artistic creation.

2.26 **“Traveling Exhibition”** means an educational and/or aesthetically meaningful assemblage of objects of artistic, historical, scientific, or technological nature organized for display at a series of successive museum venues according to a pre-arranged schedule, meeting all acceptable best practices inclusive of the appropriate insurances, and maintenance requirements.

Article III. Use, Management, Operation

The County shall operate the Morikami Museum and Japanese Gardens with the support of the Corporation in accordance with the terms and conditions of this Agreement. Future development of the Morikami Museum and Japanese Gardens shall be guided as provided in Section 3.37 below.

3.01 **The Role of the County.** The County as owner and operator of Morikami Park, the Morikami Museum and Japanese Gardens, and the Museum Premises, primarily provides, operates and manages the Morikami Museum and Japanese Gardens.

3.02 **The Role of Corporation.** The Corporation is the not-for-profit entity that primarily provides financial support and secondarily provides advice and support of the Morikami Museum and Japanese Gardens.

3.03 Use and Occupancy of the Museum Premises. The County and the Corporation shall occupy and use the Museum Premises in accordance with this Section and the approval of the Museum Director. The Museum Premises shall be used for the operation of the Morikami Museum and Japanese Gardens to display Exhibits and Artifacts to the public, and all purposes consistent with the purpose and mission of the Morikami Museum and Japanese Gardens. With the approval of the County the Corporation may also use the Museum Premises to:

- (a) Conduct Fundraising;
- (b) Operate a Museum Store and Café;
- (c) Conduct any other function, program or campaign that is consistent with the purpose and mission of the Morikami Museum and Japanese Gardens (including but not limited to the renting of the Museum Premises to third parties for functions and events) and which does not constitute an unlawful private use of the Museum Premises, Artifacts or Exhibits or a use inconsistent with County policies, County guidelines, and AAM guidelines.

All such functions and activities must receive prior approval from the Museum Director which shall not be unreasonably withheld.

3.04 Additional Uses. Any request for additional or other functions, activities or uses of the Museum Premises which are not specifically set forth in this Section must receive prior approval from the Director.

3.05 Placement of Exhibits and Artifacts. The Permanent Collection, Exhibits and Artifacts shall be placed on display on the Museum Premises and changed according to a set exhibition schedule as developed and managed by the Curator.

3.06 Office Space. The County shall allot office space to the Corporation which is reasonably sufficient to house their respective employees, records and operations, as determined by the Museum Director. The Museum Director shall ensure that all allotted space meets all applicable laws, including but not limited to building, fire and occupational hazard codes. Employees, furniture and equipment shall be arranged in a manner satisfactory to the Museum Director. The Director shall be the final authority on the use of office space and future use of the Museum Premises for purposes of office space.

3.07 Equipment. The County shall manage and maintain the information technology hardware, software, and data connections at the Museum Premises. Depending upon budget availability, the County may procure replacement Corporation hardware and software to ensure compatibility. The County shall bill the Corporation for the replacement of hardware, software, and peripherals procured by the County and used by staff of the Corporation.

3.08 Maintenance, Management and Utilities. The County shall maintain and upkeep the Museum Premises, and shall provide utilities services for the Museum Premises. The Corporation shall supplement these services upon approval of the County.

3.09 Museum Director. The County shall employ a qualified Museum Director who shall supervise County and Corporation staff and Museum volunteers. The Museum Director shall serve as liaison between the County and Corporation. The Museum Director shall serve as the liaison between the Board of Trustees and Museum staff and volunteers and provide guidance to the Corporation, coordinate the budgets of the County and the Corporation. The Museum Director is responsible to provide oversight for the daily management and operation of the Museum Premises. The Museum Director shall be the approval authority as to the operation, use and occupancy of the Museum Premises under the terms and conditions of this Agreement, subject to the authority of the Board of County Commissioners, Parks and Recreation Department policies, and this Agreement. The Museum Director shall be the approval authority as to operational and personnel policies of the Museum Premises. The Corporation shall cooperate with the Museum Director and other County employees and departments to facilitate performance of this Subsection and in the establishment of the cultural agenda for the Morikami Museum and Japanese Gardens including, but not limited to, organization, planning and presentation of Exhibits and other cultural programs.

3.10 Appointment of Museum Director. A member of the Board of Trustees, as selected by the Corporation, shall sit on the selection committee designated for appointment of the Museum Director. The Corporation may recommend the appointment or dismissal of the Museum Director to the Director. However, the Director shall make the final decision as to any recommended appointment or dismissal and shall retain supervisory responsibility over the Museum Director in accordance with County personnel rules. The Museum Director shall abide by professional standards and performance as established by the Department and in accordance with the Code of Ethics of the American Alliance of Museums and the Museum and Palm Beach County Code of Ethics.

3.11 Responsibilities of Museum Director. The Museum Director shall perform but not be limited to the following responsibilities:

- (a) Assist with ensuring the Morikami Museum and Japanese Gardens has a long-range strategy in the areas of fundraising, programming and collections, and that the strategy meets the goals of the County and Corporation with consistent and timely progress.
- (b) Develop, submit and administer annual budgets for the County.
- (c) Assist the Corporation with the coordination of the annual budget for the Corporation.
- (d) Provide recommendations and accountability in the administration of the Morikami Museum and Japanese Gardens' financial resources.
- (e) Ensure that the Board of Trustees is fully informed on all County related issues that may affect the operation of the Museum Premises.
- (f) Establish and provide oversight to the County of official records, policy and procedures, and ensure compliance with federal, state and local regulations.
- (g) Abide by the American Alliance of Museums accreditation standards and comply with the Museum Code of Ethics and the Collections Management Policy.
- (h) The Museum Director shall work with the Board of Trustees to ensure that Corporation is in compliance with its bylaws and abides by the American Alliance of Museums accreditation standards and the Museum Code of Ethics.

3.12 Removal of Museum Director. The Museum Director shall be subject to removal by the Director without the consent of the Corporation, in accordance with the procedures and practices of Palm Beach County. The Director may, however, consult with and seek the input of the Corporation prior to removing the Museum Director. In the event the Director so removes the Museum Director, the Director may independently appoint an interim Museum Director until such time as a permanent Museum Director can be appointed.

3.13 Liaison between County and Corporation. The Museum Director shall be the liaison between the County and the Corporation. This liaison relationship will be the primary means of communication between the parties to this Agreement. There also will be occasional communications among the County's personnel, the County, and the officers and trustees of the Corporation. The Director or a designee may attend as needed any meeting of the Corporation. The President of the Corporation, with prior approval of the County, may attend meetings of the County which may involve issues related to the Corporation.

3.14 Board of Trustees and Executive Committee. The Corporation shall, in accordance with its bylaws, elect a Board of Trustees and an Executive Committee. The Corporation shall use best practices for not-for-profit entities from the National Council of Nonprofits in the identification and recommendation of individuals to the Board of Trustees. The Museum Director and the Director, or a designee, shall serve as ex-officio and non-voting members of said Board of Trustees.

3.15 Board of Trustees Governance. The Corporation shall ensure that it enforces the Board of Trustees service and giving requirements, meeting attendance, and

fiduciary responsibilities of its Trustees in accordance with its bylaws. The Boards bylaws shall support this agreement and shall not conflict with the applicable terms and conditions.

3.16 Board Orientation. The Corporation shall ensure that incoming Board members are oriented with the goals and objectives of the Corporation and the County and that they understand that the primary role of Trustees is to raise funds for the Corporation and secondary role is to provide advice and support to the Museum Director in areas pertaining to the role of the Corporation.

3.17 Board Committees. The Corporation shall operate committees that will facilitate the work of the Board.

3.18 Museum Committees. Upon request of the County the Corporation shall provide committees such as; a facilities committee, an education or cultural committee, and a collections committee to advise and support the staff in their pursuit of operational goals and objectives.

3.19 Use of the Museum. The Museum shall be used for the collection and display of the Permanent Collection, Traveling Exhibits, Exhibits and Artifacts depicting the Japanese culture. The County with the support of the Corporation will schedule Exhibitions, presentations, programs and events to assure successful operation of the Morikami Museum and Japanese Gardens.

3.20 Museum Store. The Corporation shall operate a Museum Store in the space designated within the Museum as depicted on Exhibit "A". Any use of an area within the Museum Premises for expansion of the Museum Store, on a temporary or otherwise basis, must receive prior approval from the Director. The Corporation shall be responsible for all direct expenses associated with the Museum Store including, but not limited to, purchases of merchandise and resale of same; staffing; displays and all other operating expenses related thereto. The Corporation may subcontract any or all of the activities associated with the Museum Store. The term of any subcontract entered into by or on behalf of the Corporation and a third party shall be approved by the Museum Director. The term of the subcontract shall be consistent with and shall not exceed then current County policies regarding same.

3.21 Museum Store Merchandise. The Corporation may sell Museum Store merchandise relating to the Museum in the designated area and the area outside the Museum Premises as described in Exhibit "A, from temporary event structures such as booths and kiosks, upon prior approval of the Museum Director. The Corporation shall, for any permanent structure for the sale of merchandise, provide a written request from the Board of Trustees to the Director for approval.

3.22 Museum Store Storage. The County shall provide limited storage for Museum Store merchandise within the Museum. The Corporation may make arrangement for other suitable storage sites, at its own expense.

3.23 Museum Store Revenues. All revenues derived from the Museum Store shall inure to the Corporation and be utilized for the purposes of the Corporation.

3.24 Café. The Corporation shall operate a Japanese style cafe serving Japanese type food within the Museum Premises as depicted on Exhibit "A". The Corporation shall be responsible for all direct operating expenses, repairs, and functions associated with the Café, including but not limited to purchasing, preparation and resale of food items, and purchases of all equipment (except for equipment provided by the County) necessary to carry out Cafe operations. A list of equipment provided by the County shall be maintained by the Museum Director, and shall be provided to the Corporation whenever the list is modified. As set forth above, the Corporation, in conjunction with the Museum Director, shall establish policies and procedures with regard to such use of the Museum Premises. The Corporation shall also be responsible for the staffing and marketing of the Cafe. Any permanent structure for the sale of food or beverages shall be approved by the Director.

3.25 Café Maintenance. The Corporation shall clean, maintain, and repair, on a daily basis, the Cafe as described herein and all equipment to the standard as set forth by federal, state and local law applicable to food service providers. At the sole cost and expense of the Corporation, the Corporation shall clean, maintain, and repair all County owned Cafe equipment and the Cafe at a level acceptable to the Department and the Corporation, ensuring compliance with all applicable federal, state, and local laws.

3.26 Café Operations & Subcontracting. The Corporation may subcontract any or all of the activities associated with the Cafe. Further, the Corporation may also sell or subcontract the sale of food and beverage items from temporary structures within the area described in Exhibit "A" upon prior approval of the Museum Director. The term of any subcontract entered into by or on behalf of the Corporation and a third party shall be approved by the Museum Director. The term of the subcontract shall be consistent with and shall not exceed then current County policies regarding same.

3.27 Sale of Alcohol. In accordance with the Parks Ordinance Section 21-33 (Possession and Consumption of Alcoholic Beverages within County Parks) as may be amended, and upon receipt of the necessary local or state licenses or permits, the Corporation is hereby permitted to serve alcoholic beverage within the Café and Museum Premises. Permission may be withdrawn at the sole discretion of the County.

3.28 Café Revenues. All revenues derived from the Cafe shall inure to the Corporation to be utilized for the purposes of the Corporation.

3.29 Museum Premises Rental. The Corporation may rent designated areas of the Museum Premises as described more fully in Exhibit "A", upon prior approval of the Museum Director. The Museum Director shall be responsible for defining the area for rental and approving the hours of usage. Renting of any area outside of the defined areas shall require the prior approval of the Director. The Corporation shall set all fees for Museum Premises rental and shall collect all revenues associated with same. As set forth above, the Corporation, shall follow established policies and procedures with regard to such use of the Museum Premises.

- (a) The Corporation shall be solely responsible for all damages to and all expenses associated with rental of the Museum Premises, including set up, break down, and cleaning of all areas used for rentals by the Corporation.
- (b) The Corporation shall be responsible for ensuring that all renters of the Museum Premises comply with (1) the applicable policies and procedures of the County and Corporation; and (2) applicable federal, state and local laws and regulations, including but not limited to building, fire and occupational hazard codes.
- (c) The County shall have the right to make any changes in use and occupancy of the Museum Premises on a case by case basis, but in accordance generally with the policies and procedures established under paragraph (a) above.
- (d) All revenues derived from rental of any part of the Museum Premises shall inure to the Corporation.
- (e) The Corporation shall ensure that a County approved responsible manager, curator, or security guard is present to secure the facility per the County's procedures after rentals that continue beyond normal museum operating hours.
- (f) The Corporation shall ensure that the exhibit areas remain locked and unoccupied during all rentals unless specific approval has been requested and approved in advance by the Museum Director to utilize the exhibit areas during the rental. In such cases all stipulations of use provided by the Museum Director must be followed.
- (g) The Corporation shall be responsible for returning the museum premises to its original condition after rentals and before the museum premises is reopened to the public. Should County staff be required to return the museum premises to its original condition the Corporation shall reimburse the County, all County expenses.

3.30 Gardens. The County shall be responsible for all current and future Gardens' design, development and construction. The Corporation may make recommendations to the County through the Museum Director and at the County's request provide professional services to ensure authenticity of construction, including the cultural, symbolic and botanical significance. The County shall be responsible for providing primary funding for the basic Gardens' landscape maintenance as budget permits. The Corporation shall provide funding for supplement authentic Japanese gardens maintenance.

3.31 Artifacts. The Corporation shall actively seek and accept monetary donations and curator approved tangible objects to enhance the Museum's Permanent collection. Further, the Corporation may purchase tangible objects, that have been recommended and approved by the Curator, for the Permanent Collection. The title to and ownership of the artifacts shall be vested with the Corporation provided that the Corporation abides by the following standards and conditions:

- (a) The Corporation shall follow established procedures in the Museums Collections Management Policy for the accessioning and deaccessioning, display, and disposition of Artifacts.
- (b) The Corporation shall abide by the Code of Ethics of the American Alliance of Museums, the Museums' Collections Management Policy, and the Museum Code of Ethics with regard to standards for storage, display, acquisition, maintenance, deaccessioning, exhibition, storage, display and security of Artifacts.
- (c) All property in the Permanent Collection shall be stored at the Museum or at a County agreed upon location in accordance with policies and procedures approved by the Corporation and the County and pursuant to storage standards of the American Alliance of Museums.
- (d) The Corporation shall make available Tangible Objects from the Permanent Collection for exhibitions and displays at the Museum as well as for traveling exhibitions in accordance with the Museums Collection Policy and standards of the American Alliance of Museums.
- (e) The Corporation shall reimburse the County for their annual insurance premium and shall pay for any supplemental insurance policy required by the County or any loaning entity.
- (f) The Corporation shall provide security at a level required by the County for the Permanent Collection and any supplemental security required for on-loan artifacts whether they are being exhibited, transported, or in storage.
- (g) The Directors approval shall be required in writing prior to the deaccessioning of any artifacts in the Museums Permanent Collection.

Should the Corporation fail to comply with these conditions, or if the Director determines that any portion of the Permanent Collection is in immediate jeopardy of sustaining serious harm due to a failure on the part of the Corporation, the Director may use whatever means are necessary to protect the Permanent Collection up to and including the repossession of the Permanent Collection from the Corporation. Should this agreement be terminated or the Corporation be dissolved the ownership of the Permanent Collection will inure to the County for the benefit of the Morikami Museum and Japanese Gardens.

3.32 Personal Property. The Corporation shall actively seek and accept monetary donations or Personal Property to enhance operations with the Curator's prior approval. Further, the Corporation may purchase personal property that has been recommended and approved by the Curator, for the operation of the Museum. All funds and Personal Property of the Corporation, including donations thereto, shall remain the property of the Corporation. All property under ownership or control of the Corporation shall be stored at the Museum or at a mutually agreed upon place in accordance with policies and procedures approved by both the County and the Corporation. Should this agreement be terminated or the Corporation be dissolved the personal property of the Corporation will inure to the County.

3.33 Capital Improvements. Upon request of the County with prior approval from the Director, the Corporation shall fund capital improvements to the Museum Premises. The Director's approval may include conditions required of the Corporation. The improvements shall meet County standards, rules, regulations and all applicable federal, state and local laws. The title to and ownership of the improvements shall be vested with the County. The County shall have the right to fund and make any capital improvement, addition, modification or repair to the Museum Premises it determines are warranted or are deemed reasonably necessary.

3.34 Museum Employees. The Corporation shall establish and implement employee policies and procedures which are consistent and not in conflict with policies and procedures established by the County for County employees also under the supervision of the Museum Director.

This Agreement establishes that employees of both the County and the Corporation shall be housed at the Museum Premises or otherwise assigned to the Museum for the purpose of performing this Agreement. Each party shall be solely responsible for providing compensation and benefits to its respective employees. Except as expressly provided herein, the Museum Director shall have the final authority over all employees of the County and the Corporation in regard to day-to-day operations of the Museum Premises.

The Corporation shall provide funding to the County for designated County employees with the approval of the Director and the Corporation and whose compensation and benefits are reimbursed by the Corporation to the County for those designated employees.

3.35 Hours of Operation. The hours of operation of the Museum Premises shall be set by the Director. The Museum Director shall approve the hours of operation that the Museum is open to the general public; the hours of operation for the Cafe; Museum Store; and the hours of operation for Museum Premises rentals, special events, and educational activities. The Corporation shall designate certain management level employees who will be responsible for supervising and securing the Museum Premises after Corporation events that fall outside of normal operating hours. The designated employee shall be responsible for following all policies and procedures associated with the operation, supervision and security of the Museum Premises.

3.36 Policies and Procedures. The Corporation shall approve policies and procedures for the Corporation's responsibilities. The Museum Director shall recommend policies and procedures to the Corporation for approval. The Museum Director shall provide the Corporation with the County's policies and procedures with regard to the management and operation of the Museum Premises. Policies and procedures of the Corporation shall be consistent with and shall not conflict with those established by the Director of the Palm Beach County Parks and Recreation Department pertaining to the management and operation of the Museum Premises.

The Corporation, in conjunction with the Museum Director, shall follow established procedures with regard to its use of the Museum Premises. Said procedures include, but are not limited to: coordination between the County and the Corporation of the use; applicable fees; insurance requirements; indemnification; use or sale of alcoholic beverages; set up and clean up requirements; security; use of subcontractors; provisions regarding damages to the Museum Premises; and an appropriate security deposit. With regard to the use of the Museum Premises, the Corporation and all subcontractors hired by the Corporation shall abide by all applicable federal, state and local laws, rules, and regulations.

3.37 Strategic Plan. The Corporation in conjunction with the Museum Director and Museum staff shall be responsible for the development of a Strategic Plan ("Plan") for the Corporation. The Museum Director and the Corporation shall review and revise the Plan on an annual basis and submit any revisions for review and approval by the Corporation. The Director shall review and approve the Plan and any changes prior to its implementation to ensure it is in agreement with the County's plans for the Museum and Japanese Gardens and the Corporation's purpose of providing primarily financial and secondarily operational support to the Museum and Japanese Gardens. Such approval shall not be unreasonable withheld. The Corporation shall work diligently to execute the plan in the timeframe detailed in the Plan.

3.38 Mutuality of Interest and Future Development. By common agreement, Palm Beach County and the Corporation, Board of Trustees, staff and volunteers, are committed to presenting authentic representations of Japan and Japanese culture through programs, exhibitions and gardens for the public's education, enjoyment and well-being. The County and the Corporation have mutual interest in the use of the Museum Premises to promote this ideal, and resolve that future development of the Museum Premises remains consistent with the mutuality of interest. The further development of uses and structures within the Museum Premises shall be directed and overseen by the County with the support of the Corporation, with all such future development accomplished in a manner to ensure that the vision of the Morikami Museum and Japanese Gardens as a unique cultural entity remains paramount.

The County has developed a Master Plan with input from the Corporation for the further development of the Museum Premises. The County shall be responsible for bearing the costs of amending the Master Plan.

The Corporation shall provide input to the County regarding the further development of the remaining parcels within Morikami Park. The County in its consideration for future development for Morikami Park shall make a careful determination with input from the

Corporation, in accordance with the terms of the deed restrictions and lease agreements associated with Morikami Park.

Article IV. Fees, Funding and Budget

4.01 Admission Fees. The County, shall set fees for daily general admission to the Museum Premises and collect the fees through a Point of Sale (“POS”) system. All daily general admission fees shall inure to the County.

The County through a POS system shall collect its admission revenue and where it is determined to create efficiencies or improved security designated Corporation revenue derived from but not limited to membership and other fees and charges.

The County will distribute reimbursement of Corporation revenue to the Corporation within every two weeks via electronic wire transfer. The County shall deduct three percent (3%) for all credit card transactions and deduct any charge backs, fees and adjustments incurred by the County for Corporation transactions.

The County will provide the Corporation accountant a copy of the daily computer reconciliation from the POS that is used for the basis of payment to the Corporation.

The Director may approve, waive or reduce general admission fees for special events and establish special discount fees and waive admission fees for members of the Corporation, in accordance with Department policies and procedures pertaining to the Museum Premises.

4.02 Membership Fees. The Corporation shall set general membership fees for the Corporation and collect same. The Corporation shall set membership levels. As a benefit to the members of the Corporation, each level of membership shall provide for the general admission fee to be waived for a preset number of visitors. Any change to membership levels, benefits, and fees shall be approved by the Director.

4.03 Naming Opportunities. The Corporation may solicit and accept donations for naming opportunities within the grounds and buildings of the Morikami Museum and Japanese Gardens. Naming opportunities shall include, but not be limited to; benches, classrooms, galleries, gardens, theaters, restaurants, seating, sculptures, gates, and other installations. Naming opportunities shall not include the Institution or park name or existing named items. The Corporation will:

- (a) Secure the Museum Directors written approval of all naming requests and the location of all named objects. Additionally, the Directors approval is required for requests over twenty thousand dollars up to one hundred thousand dollars and the Board of County Commissioners approval over one hundred thousand dollars.
- (b) All naming opportunities shall have a written agreement executed by the donor and the Board of Trustees President, on behalf of the Corporation.
- (c) All naming agreements shall have a morals clause that shall include at a minimum the following verbiage: "If at any time the donor fails to conduct himself or herself without due regard to public morals and decency, or if the donor commits any act or becomes involved in any situation, or occurrence tending to degrade the donor in the community, or which brings the donor into public contempt or scandal, or which materially and adversely affects the reputation or business of the Corporation, whether or not information in regard thereto becomes public, the Corporation shall have the right to remove donor's recognition rights as required pursuant to this naming agreement."
- (d) The name, text and or content of all naming requests shall be approved by the Museum Director and will be in agreement with the standards of the Museum and the Parks and Recreation Department.
- (e) Agreements for naming opportunities of less than fifty thousand dollars shall have a termination clause that will terminate the agreement should the agreement between Morikami Inc., and the County terminate or if the named item is destroyed or demolished and is not rebuilt. Benches that are destroyed will not be rebuilt unless the signed Agreement between the donor and the Corporation specifically states that the bench will be rebuilt.
- (f) Agreements for naming opportunities in excess of fifty thousand dollars shall have a termination clause that will terminate the agreement if the County no longer owns and operates the Morikami Museum and Japanese Gardens or if the named item is destroyed or demolished and is not rebuilt.

4.04 Funding. The Corporations funding shall be utilized only for the benefit of the Morikami Museum and Japanese Gardens. The Corporation shall, throughout the term of this Agreement, use their best and primary efforts to continue to provide funding for the expansion, improvement, and support of the Morikami Museum and Japanese Gardens in accordance with the strategic plan and priority requests of the County. All fundraising efforts shall be coordinated with the Development Director to ensure best fundraising practices for not-for-profit organizations are followed.

The endowment shall be utilized for the benefit of the Morikami Museum and Japanese Gardens. The Corporation shall, throughout the term of this Agreement, use their best and primary efforts to expand the endowment through fundraising and financial

management to provide funding for the management and operation of the Morikami Museum and Japanese Gardens in accordance with the strategic plan and priority requests of the County.

Upon dissolution of the Corporation or termination of this agreement, all funds and other Tangible Objects, including all Artifacts purchased by or donated to the Corporation, shall inure to the County and shall at all times be utilized in a manner consistent with the purchase or donation and in furtherance of the Morikami Museum and Japanese Gardens.

4.05 Corporation. Subject to funding availability, the Corporation shall be responsible for providing primary funding functions for the acquisition and care of the Permanent Collection; Exhibits and Displays; programming; marketing and public relations; special events and fundraising; programs and tours; Museum Store; and Cafe. The Corporation shall supplement the cost of management, operation, Museum maintenance, higher level authentic maintenance of Japanese landscaping and security for the Museum Premises.

4.06 County. Subject to funding availability, the County shall be responsible for providing primary funding for operation, management, maintenance, and basic gardens maintenance, for the Museum Premises.

4.07 Budget. The Corporation with assistance from the Museum Director shall cooperatively prepare the annual budget of the Corporation, including income, expenses, and capital expenditures of the Corporation and provide a copy of same to the Director through the Museum Director.

4.08 County Annual Budget. The Museum Director shall prepare and submit an annual budget for County funding of the Museum Premises to the Director. The proposed budget shall be provided to the Director for consideration within the overall Department budget, which shall be subject to the final approval of the Board of County Commissioners.

4.09 Corporation Annual Budget. The Museum Director shall support the development and administration of an annual budget for Corporation funding of the Morikami Museum and Japanese Gardens. In overseeing the preparation of the budget, the Museum Director shall take into consideration the advice and guidance of the Corporation. The Corporation shall adopt its annual budget and a copy of the adopted Corporation budget will be provided to the Director.

4.10 Reporting. The Corporation shall provide to the County financial reports, including but not limited to:

- (a) Monthly profit/loss statements with reconciled bank statements. Such statement shall be provided no later than the end of the following month;
- (b) An annual profit/loss statement; and
- (c) Any other information prescribed by the Museum Director or required under this Agreement.

4.11 Accounting Records; Audits. The Corporation shall conduct and provide to the Director an annual independent audit of the Corporation's records in conformity with generally accepted accounting procedures. The Corporation shall arrange for the operating account and records, including all books, records, bank accounts and accounting statements, to be audited as soon as possible after the end of each fiscal year, by a Florida licensed certified public accountant(s) named by the Corporation, after consultation with the County.

4.12 The Corporation shall preserve and make available for audit and examination by the County all records described in this Section, as well as a copy of all business and income tax returns. The Corporation's records shall be open for inspection by the County for three (3) years after termination of this Agreement, except that such records shall be retained by the Corporation until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the three (3) year period. All records will be made available locally at the Museum Director's request within (5) days of said request. The Corporation shall allow the County, and its auditors to inspect said books and records, correspondence, memoranda and other information at all reasonable times during normal business hours.

4.13 Revenues. The County has provided to the Corporation a number of revenue generating opportunities such as membership fee's, sponsorships, the café, the store, facility rentals and special event dates to the Corporation to raise funds. All revenues derived from these sources including the Museum Store, rental of the Museum Premises, Cafe, special events and Fundraising shall inure to the Corporation and be utilized for the Corporation purposes of supporting the Morikami Museum and Japanese Gardens as set forth in this Agreement.

Article V. Indemnity

5.01 Indemnity Each party shall be responsible for any claims, liability, losses or causes of action which may arise from that party's acts or omissions or in accordance with its performance under this Agreement. This provision shall not be construed as a waiver of any right or defense, including Sovereign Immunity that the County has under Section 768.28, Florida Statutes.

The Corporation shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expenses, losses, cause, damages or causes of action of every kind or character,

including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising in any matter reasonably related to the Corporation's performance under this Agreement or due to the act or omissions of Corporation, its agents or employees, in the performance of this Agreement or subcontracts related thereto.

The Corporation shall be solely responsible for conditions not inherent in the structure at the Museum Premises and associated with rental of the Museum Premises by the Corporation, including egress and ingress at private events.

This article shall survive termination or expiration of this Agreement.

Article VI.

Insurance

6.01 Insurance. The Corporation shall maintain, on a primary basis and at its sole expense, at all times during the term of this Agreement, the coverages and limits, including endorsements, described herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by the Corporation, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Corporation under this Agreement. The Corporation agrees to provide County a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. It shall be the responsibility of the Corporation to provide initial evidence of the required minimum amounts of insurance coverage to:

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801

Subsequently, the Corporation shall, during the term of the Contract, and prior to each renewal thereof, provide such evidence to ITS at abc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein.

6.02 Commercial General Liability. The Corporation shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.

6.03 Business Automobile Liability. The Corporation shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence.

Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event the Corporation does not own automobiles, the Corporation agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

6.04 Worker's Compensation Insurance & Employers Liability. The Corporation shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis.

6.05 Liquor Liability. The Corporation shall, during the term of this Agreement and any extension thereof, maintain Liquor Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence.

6.06 Additional Insured. The Corporation shall endorse County as an Additional Insured with a CG026 Additional Insured – Designated Person or Organization endorsement to the Commercial General Liability and Liquor Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." Coverage shall be provided on a primary basis.

6.07 Property Insurance. The Corporation shall maintain: (1) property insurance in an amount not less than 100% of the total replacement cost of all of the Corporation's personal property and contents located on the Museum Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than 25% of the property insurance limit. (2) Flood insurance, regardless of the flood zone, in an amount not less than 100% of the total replacement cost of the Corporation's contents located on the Premises; or the maximum amount available from the National Flood Insurance Program, whichever is less. (3) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than 100% of the total replacement cost of the Corporation's personal property and contents located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association, whichever is less. The Corporation shall ensure such coverage is provided on a primary basis.

6.08 Subcontractor's Insurance. Upon the leasing or subcontracting of any services, or designated areas by the Corporation with a third party, said third party shall maintain the applicable above-referenced insurances and name the County and the Corporation each as "Additional Insured".

6.09 Waiver of Subrogation. The Corporation agrees by entering into this Agreement to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit the Corporation to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Corporation agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically

prohibiting such an endorsement, or voids coverage should the Corporation enter into such an agreement on a pre-loss basis.

6.10 Certificate(s) of Insurance. Within forty-eight (48) hours of the COUNTY's request to do so, the CONTRACTOR Corporation shall deliver to the COUNTY via the Insurance Company/Agent a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. During the term of the Contract and prior to each subsequent renewal thereof, the CONTRACTOR Corporation shall provide this evidence to ITS at pbc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage

6.11 Umbrella or Excess Liability. The Corporation may satisfy the minimum liability limits required above for Commercial General Liability, Business Auto Liability and Liquor Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability, Business Auto Liability and Liquor Liability. The Corporation agrees to endorse the County 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 pure/true "Follow-Form" basis.

6.12 Right to Review. County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.

Article VII. General Provisions

7.01 Term. This Agreement shall remain in effect for such time as the County owns the Morikami Museum and Japanese Gardens, unless sooner terminated without cause by either of the parties upon one hundred twenty (120) days written notice or upon written notice by the County to the Corporation for material non-compliance in the performance of any of the terms and conditions as set forth herein and where the Corporation does not cure said non-compliance within sixty (60) days of receipt of written notice to do so.

7.02 Validity. After consultation with their respective legal counsel, the County and the Corporation each represents and warrants to the other its respective authority and

power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature.

7.03 Ambiguities. Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against one party as against the other.

7.04 Headings. The headings or captions of sections and subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

7.05 Assignment. The rights and duties arising under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign this Agreement nor any interest hereunder without the express prior written consent of the other party.

7.06 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. The parties hereto may pursue any and all actions available under law to enforce this Agreement including, but not limited to, actions arising from the breach of any provision set forth herein.

7.07 Independent Contractor. The Corporation is, and shall be, in the performance of provisions pursuant to this Agreement, an Independent Contractor, and not an employee, agent, or servant of the County. The Corporation does not have the authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement. The County shall have no contractual obligation to any person or entity retained or engaged by the Corporation to perform any services pursuant to this Agreement. Any disputes, claims, or liability that may arise as a result of the Corporation's procurement of such services is solely the responsibility of the Corporation and the Corporation hereby holds the County harmless for same to the extent permitted by law.

7.08 Nondiscrimination: The Corporation warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information. The Corporation has submitted to the County a copy of its non-discrimination policy which is consistent with the above, as contained in Resolution R2014-1421, as amended, or in the alternative, if the Corporation does not have a written non-discrimination policy, it has acknowledged

through a signed statement provided to the County affirming their non-discrimination policy conforms to R2014-1421, as amended.

7.09 Full Agreement. This Agreement represents the entire understanding between the County and the Corporation, and supersedes all other negotiations, representations or agreements, either written or oral, relating to this Agreement. Specifically, this Agreement shall supersede and replace Agreement R99-78D in its entirety. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

7.10 Notices. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. Mail to the following:

As to the County:

Director of Parks and Recreation
Palm Beach County Parks and Recreation Department
2700 Sixth Avenue South Lake Worth, FL 33461

As to the Corporation:

President,
The Morikami, Inc.
4000 Morikami Park Road
Delray Beach, FL 33446

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

7.12 Exhibits. The following exhibits are attached hereto and made a part of this Agreement:

- Exhibit A: Museum Premises Plan (2 pages)
- Exhibit B: Morikami Museum and Park Plan

7.13 Sunshine and Public Records Compliance. Corporation shall comply with Florida Statute, Chapters 119 and 286, Florida's Public Records Act and Sunshine Laws respectively, as may be amended.

7.14 Criminal History Records Check Ordinance. If the Corporation's employees or subcontractors are required under this Agreement to enter a "critical facility," as identified in Resolution R-2003-1274, the Corporation shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The Corporation acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although the County agrees to pay for all applicable

FDLE/FBI fees required for criminal history record checks, the Corporation shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

7.15 Final Authority. If County and Corporation cannot mutually agree on any decision required under this Agreement, The Parks and Recreation Department Director shall make the final binding determination, which shall be in the best interest of the Morikami Park, the Morikami Museum and Japanese Gardens and the Museum Premises.

7.16 Regulation; Licensing Requirements: The Corporation shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. The Corporation is presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.

7.17 Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Corporation: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Corporation shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Corporation is specifically required to:

- (a) Keep and maintain public records required by the County to perform services as provided under this Contract
- (b) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Corporation further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time
- (c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Corporation does not transfer the records to the public agency
- (d) Upon completion of the Contract the Corporation shall transfer, at no cost to the County, all public records in possession of the Corporation unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Corporation transfers all public records to the County upon completion of the Contract, the Corporation shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Corporation keeps and maintains public records upon completion of the Contract, the Corporation shall meet all applicable requirements for retaining public records. All records stored electronically by the Corporation must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County

Failure of the Corporation to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Corporation acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CORPORATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

7.18 Access and Audits: If applicable, should any portion of the payments made to Corporation include Corporation's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, Corporation will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The County shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at Corporation's place of business

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Corporation, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

7.19 No Third Party Beneficiaries: No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Corporation.

*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

ATTEST:

**SHARON R. BOCK, CLERK
& COMPTROLLER**

By: _____
Deputy Clerk

**PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Mayor

WITNESSES:

THE MORIKAMI, INC.

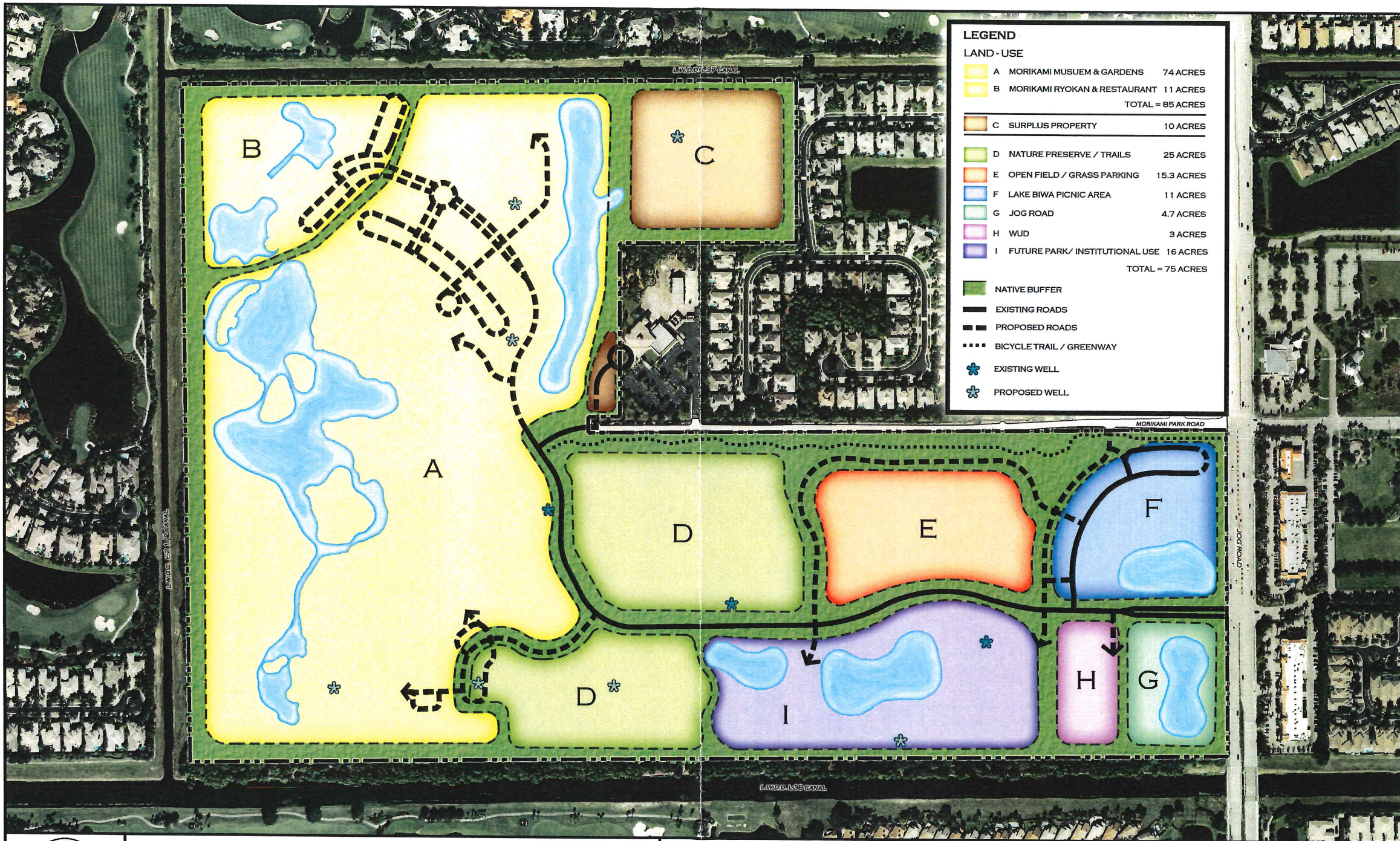
By: _____
Celia Turner Zahringer
President, Board of Trustees

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Eric Call
Department Director

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
Anne Helfant
Assistant County Attorney



PALM BEACH COUNTY
 PARKS & RECREATION DEPARTMENT
 PLANNING & DEVELOPMENT DIVISION

MORIKAMI PARK
 PROPOSED USE AREAS 2014



Agenda Item #

4D-2

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 7, 2013

Consent
 Ordinance

Regular
 Public Hearing

Department: Facilities Development & Operations

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to authorize: staff to prepare and issue a Request for Proposals (RFP) to construct and operate a culturally authentic Japanese Inn (Ryokan) at the Morikami Museum and Japanese Gardens.

Summary: Recently the Parks and Recreation Department was contacted by a not-for-profit children focused charity, Medical Missions for Children ("MMC"), expressing interest in leasing 14 acres in Morikami Park to construct and operate a five-star Japanese Inn and Spa. Morikami Park encompasses 170 acres west of Jog Road in southern Palm Beach County and first opened in 1977. In 1993, a new Museum opened as the only museum in the United States dedicated exclusively to Japanese culture. Over the past 35 years, various master plans for the Morikami Park, Museum and Gardens have been produced with future elements that include additional lakes, gardens, exhibits, artisan village, and a Japanese Inn. MMC's concept is to develop a five star Ryokan and Spa in proximity to and with connectivity to the Museum and Gardens. The intent behind issuing an RFP is to determine if there are other groups interested in development of a Ryokan and to obtain further information regarding development concepts. That information will be utilized to analyze feasibility, consistency with the Morikami Master Plan and consistency with land use and zoning requirements. Assuming the development concepts are found consistent with the Master Plan and reasonable to obtain land use and development approvals, the proposals would then be utilized to select a developer with whom to negotiate. The lease of up to 14 acres within Morikami Park for a Ryokan has the support of the Morikami, Inc. Board of Trustees. (PREM) District 5 (HJF)

Background and Policy Issues: In the 1970's, the late George Morikami donated land west of Delray Beach to Palm Beach County and the State of Florida that is deed-restricted for public park purposes. The County now owns or controls 194 acres both east and west of Jog Road and adjoins those lands donated by Mr. Morikami.

Morikami Park's first phase opened in 1977 on 40 acres and included a traditional Japanese residence and a modern garden on an island surrounded by a picturesque lake. In 1993, a 32,000 square foot museum opened featuring a theater, café, climate controlled exhibit space, library and museum store. Between 1999 and 2001, the Morikami Japanese Gardens were created on

CONTINUED ON PAGE 3

Attachments:

1. Location Map
2. Letter of Support from Morikami, Inc.

Recommended by: 
Department Director

4/22/13
Date

Approved by: 
County Administrator

4/26/13
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>				

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____/Revenue Source _____ Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no fiscal impact associated with this agenda item.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB *[Signature]* 4/24/2013
 4/13/13 4/25 4/25

[Signature] 4/25/13
 Contract Development and Control
 4-25-13 *[Signature]*

B. Legal Sufficiency: 4/26/13

[Signature] 4/26/13
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment
 g/administration/nbeale/agendas/forms/morikami.japanese.inn.draft

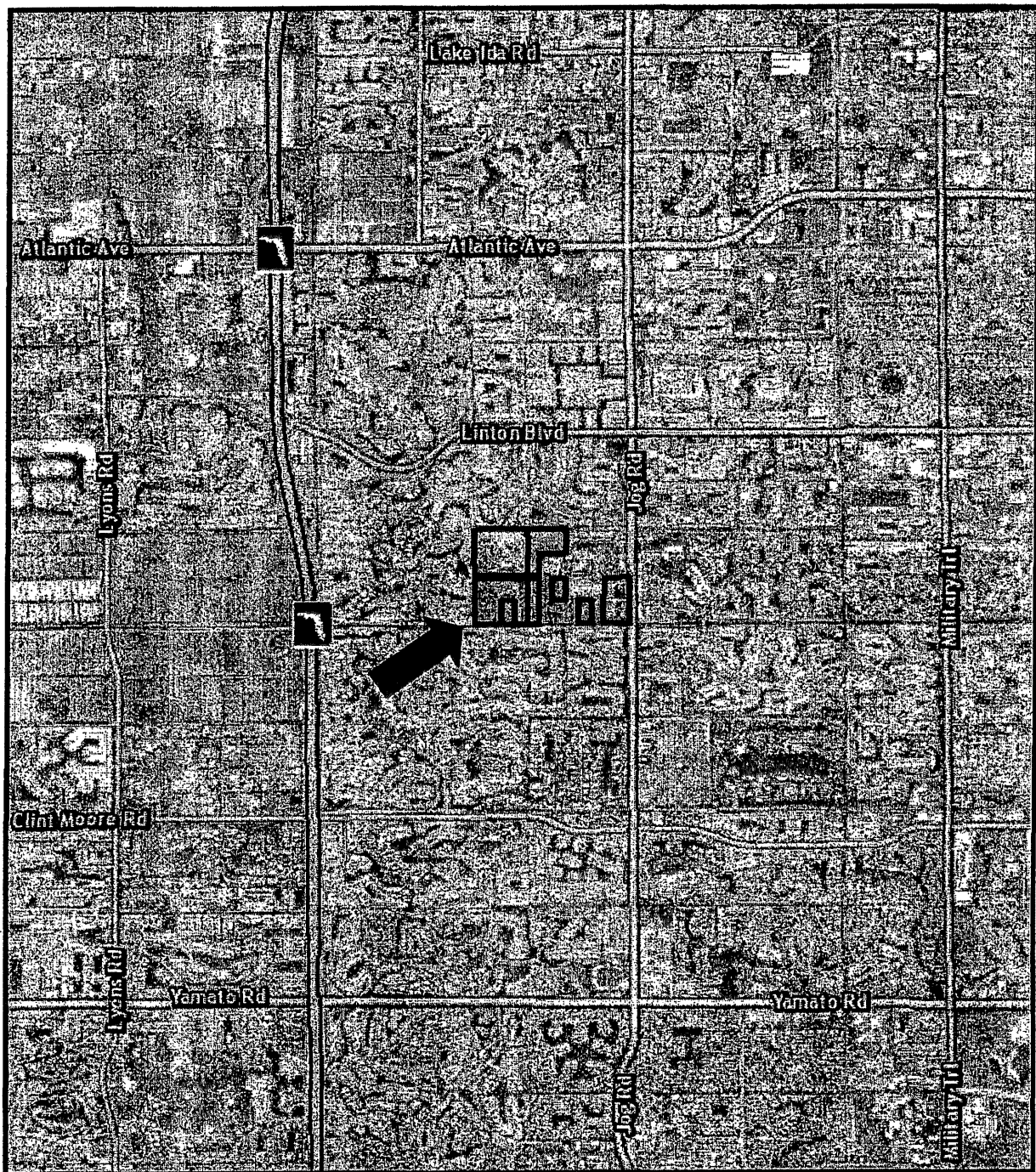
CONTINUED from page 1 - Background and Policy Issues

16 acres adjoining the Museum. Over the past 35 years, various master plans have been created and include future amenities such as an expanded Bonsai Garden, Artisan Village, expanded exhibit space, and a Japanese Inn and Conference Center. The Department supports a Japanese Inn on park property because it will add to the cultural experience, increase our marketing reach, and provide financial support to the County.

The Department recently received conceptual proposal from MMC, a 501(c)(3), not-for-profit children's charity to construct and operate a five-star Japanese Inn, or Ryokan, on a 14 acre leasehold. The project as proposed would be a cooperative venture with the County and Morikami, Inc., the not-for-profit arm of the Museum and Japanese Gardens. MMC proposes to construct and operate this multi-million dollar facility in close proximity to the Museum and pay the County annual lease payments and associated property taxes. The construction of a Ryokan within Morikami Park has the complete support of the Morikami, Inc., Board of Trustees. Following consultation with the County Attorney's Office, it was determined that a competitive process should be used to identify interested candidates, obtain more detailed information regarding development concepts, and potentially select a project developer with which to negotiate.

Board approval is sought to solicit proposals from development firms that desire to construct and operate a Japanese Inn of authentic cultural design. Staff emphasizes that the sole purpose of this item is for direction to develop and subsequently issue an RFP only. Staff has not completed due diligence to validate the feasibility of developing a Ryokan at the Park. Rather, with Board direction to proceed, physical and regulatory implications would then be further explored based upon the specific RFP response(s). The specific proposal(s) will be evaluated for consistency with provisions of the Comprehensive Plan, Unified Land Development Code (ULDC) and other authority, and to identify any policy issues that might demand further examination. At this time, staff has reached no conclusions as to whether prevailing regulations would or would not support the development of a Ryokan as a complimentary component of Morikami Park.

LOCATION MAP



MORIKAMI
MUSEUM AND JAPANESE GARDENS

October 30, 2012

Mr. Eric Call
Director, Parks and Recreation
Palm Beach County Government
2700 Sixth Avenue South
Lake Worth, FL 33461

Dear Eric,

Thank you again for all of your continued support for the Morikami Museum and Japanese Gardens. Based on our conversations of the past few months, and the request that we received from Commissioner Aaronson, on October 18, 2012, The Board of Trustees unanimously approved the following resolution:

The Board of Trustees is providing our support for the pursuit of the following two activities by Palm Beach County Board of County Commissions:

- 1) Sale of up to 10 acres of Morikami Park land immediately north of the Slomin Family Resource Center (a.k.a AOS Property), with the proceeds to be reinvested in the Morikami Park.
- 2) Continue with the discussions to build a Ryokan Resort and Conference center on the Morikami Park property, with the following conditions:
 - a. Architectural design to be reviewed by Morikami Inc Board of Trustees
 - b. Landscape design to be reviewed by Morikami Gardens design team
 - c. Development be limited to a single story structure
 - d. Design of property required to be authentic Japanese design
 - e. Master plan document be submitted to Morikami Board of Trustees and Facilities Committee for review.
 - f. The Board of Trustees requests land lease revenues be used to support Morikami Park and its ongoing maintenance.

We are extremely excited about the potential for these modifications, and look forward to working closely with the County to ensure a world class destination site.

Please feel free to call me with me with any questions, or if you need additional information.

Sincerely,



Randal Baker
President, Board of Trustees
Morikami Inc.

4000 Morikami Park Road
Delray Beach, FL 33446
P. 561.495.0233
F. 561.499.2557

www.morikami.org