

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date:	September 15, 2020	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Facilities Development & Operations		

I. EXECUTIVE BRIEF

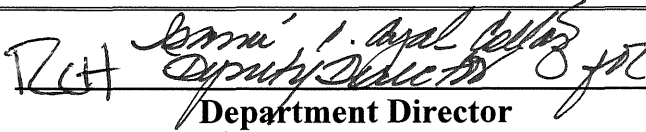
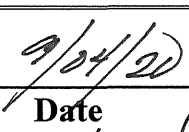

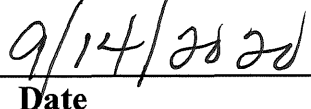
Motion and Title: Staff recommends motion to approve: An Interlocal Agreement with the City of West Palm Beach providing for the County to convey to the City forty-five (45) County owned lots within the City’s Golf Course in exchange for the City: 1) conveying Transferable Development Rights (TDR’s) to the County for use on Block D and 2) amending the City’s development regulations to provide for the reconstruction of the Governmental Center in the event of destruction .

Summary: This item will settle two long standing issues between the City and County. The first issue pertains to the County’s ownership of 45 lots within the boundaries of the City’s golf course. The County acquired the lots in the 1950’s by final decree for non-payment of taxes. Neither party was aware of the ownership issue, which came to light in 2018 when the City was negotiating for redevelopment of its golf course. The second issue pertains to height limitations imposed upon the County’s Block D and Governmental Center properties. The City’s conveyance of TDR’s to the County will enable the County to exceed the current height limitations and achieve its intended development capacity on Block D. In addition, the City will process amendments to its development regulations to address the non-conforming status of the Governmental Center, by extending the time frames for reconstruction in the event of destruction. This Interlocal Agreement provides for the exchange of the County owned golf course lots for City owned TDR’s for Block D and amendment of the City’s development regulations. **(Property & Real Estate Management) District 7 (HJF)**

Background and Policy Issues: From 1985 to 1993, the County assembled several parcels of property within the block adjacent to the Government Center bounded by Dixie Highway to the west, 4th Street to the north, Olive Avenue to the east and 3rd Street to the south. This block is referred to as Block D. It is currently in use as a surface parking lot for County employees and public parking. The property was acquired for future expansion of the Governmental Center and/or the Judicial Center. In 1996, City voters passed a referendum imposing height limitations throughout the downtown on properties east of Dixie Highway, which were modified in 2006 by the City’s adoption of its Downtown Master Plan. The height limitations on Block D are currently 10 stories or 128 feet (12.8ft./floor), whichever is less. In order to accommodate future expansion of the Judicial Center which has an existing height of 18.9 feet per story, we would need 10 stories and an overall height of 189 feet. County staff initially requested that the City amend its Downtown Master Plan to allow for additional height for public buildings. The City initiated a text amendment to its development regulations, providing for a government use to exceed the maximum height allowed in a sub-district by 10 percent (10%); an increase that proved insufficient to allow for the County’s development program on Block D. As an alternative it was suggested that the City provide TDR’s to the County to exceed the height limitations.

Continued on Page 3

- Attachments:**
- 1. Location Map
 - 2. Interlocal Agreement

Recommended By:		
	Department Director	Date
Approved By:		
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Does this item include the use of federal funds? Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____

Program _____

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

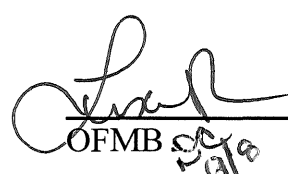
No fiscal impact.

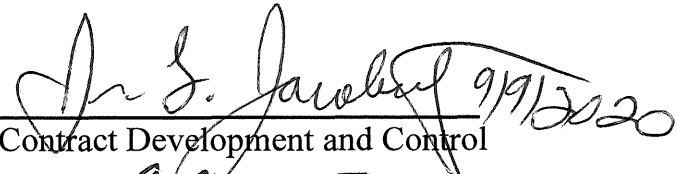
Fixed Assets Number N/A

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:


OFMB *9/18*
9/18/2020
LM
9/18


Contract Development and Control
9-9-20 TW
9/9/2020

B. Legal Sufficiency:


Assistant County Attorney *9/10/2020*
for Howard Falcon

C. Other Department Review:

Department Director

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

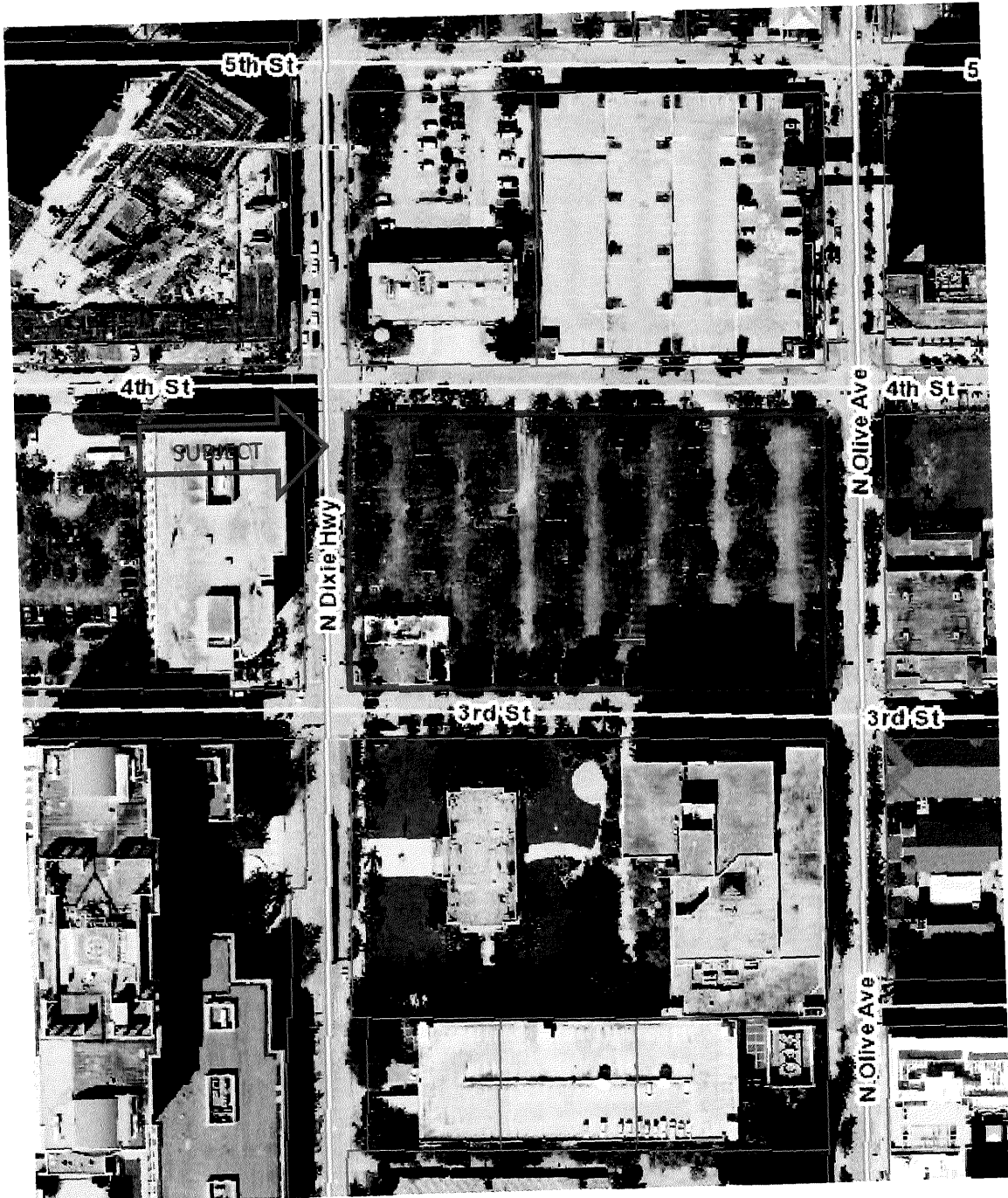
Background and Policy Issues: This Interlocal Agreement provides that in exchange for the County conveying to the City the 45 lots within the City golf course, the City will convey to the County TDR's in an amount equivalent to 110,000 square feet of development capacity which will allow for a maximum building height of 15 stories or 206.7 feet, whichever is less. This will resolve the County's issue with respect to height limitations on Block D.

-The Governmental Center has 12 stories and is 176 feet tall. The City's development regulations only allow for a height of 10 stories or 128 feet, such that the Governmental Center is currently a legal, non-conforming, grandfathered structure. County staff were concerned that in the event of a casualty to the building, the County would not be able to restore the building within the time frames required by the City's regulations. Current City regulations applicable to legal non-conforming structures require that construction be commenced within 18 months of destruction. Considering the strict procurement and contracting regulations that must be followed, 18 months will most probably prove insufficient for any governmental agency to design and perform repair and/or reconstruction of a public facility. Failure to meet the time frames established in the City's regulations would preclude the County from demolishing the old building and replacing it with a newly designed building that exceeded the height limitations. During the course of negotiations with the City, County staff requested that the City provide TDR's sufficient to cure this non-conformity. Rather than use TDR's to outright cure this non-conformity, City staff proposed amendments to their development regulations which would provide a longer time frame to commence restoration of the building after a casualty.

As negotiated, this Interlocal Agreement provides for the City to amend its Downtown Master Plan Urban Regulations to permit the owner of a public facility destroyed by windstorm, flood, fire or other natural disaster to reconstruct its building, provided that the owner submits a building permit application within 18 months, with the right to obtain a 6-month administrative extension.

On July 2, 2020, the City notified the County that its Commission had initiated conflict resolution procedures to address the golf course parcels matter by the adoption, on June 29, 2020, of Resolution No. 198-20. The Conflict Assessment Meeting required under 164.1052, Florida Statutes, was held on July 21, 2020. As a result, the City and the County agreed to work on formalizing this Interlocal Agreement, extending the time for holding the Joint Public Meeting required by Chapter 164, Florida Statutes to September 21, 2020. Execution of this Interlocal Agreement by the City and the County will end the conflict resolution process on the golf course parcels matter.

Attachment 1



LOCATION MAP LOT D



LOCATION MAP GOLF COURSE

INTERLOCAL AGREEMENT

WPB No. 25235

This **INTERLOCAL AGREEMENT** ("Agreement") is made and entered into _____, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("County") and the City of West Palm Beach, a municipal corporation organized and existing under the laws of the State of Florida ("City").

WITNESSETH

WHEREAS, the City and the County engaged in the conflict resolution process provided in Section 164, Florida Statutes to resolve an issue relating to title of scattered parcels within the City of West Palm Beach Golf Course; and

WHEREAS, the County claims an ownership interest in 45 parcels of property legally described in Exhibit A ("Golf Course Property"), which County has agreed to transfer to the City in fee simple; and

WHEREAS, the County owns "Block D," located at 315 3rd Street, West Palm Beach, FL 33401, and the Robert Weisman Governmental Center ("Governmental Center"), located at 301 North Olive Ave., West Palm Beach, FL 33401, as depicted in Exhibit "B" attached hereto; and

WHEREAS, the Quadrille Garden District ("QGD") is a specific development district identified by City within its Downtown Master Plan. "Block D" and the Governmental Center are located in the QGD and the QGD-10 subdistrict; and

WHEREAS, the QGD-10 subdistrict establishes a maximum number of 10 stories and a maximum building height of 128 feet, whichever is less, and which limitations are insufficient to permit County's intended development program on "Block D" and to make the Governmental Center a conforming use; and

WHEREAS, The City initiated (Code Revision Case No. 19-06) a text amendment to Chapter 94 Zoning and Land Development Regulations, Article IV, Section 94-109, Definitions, providing for a government use to exceed the maximum height allowed in a subdistrict by 10 percent (10%), which does not allow sufficient building height for the County to achieve its intended development program on "Block D" and does not authorize additional floors to make the Governmental Center a conforming structure; and

WHEREAS, the City's Transfer of Development Rights (TDR) Program allows unused development rights from one property and/or a City Registry of TDRs to be transferred to another property. The City has a special district incentive whereby City owned TDRs can be transferred, as an incentive, to eligible receiving sites for certain types of development; and

WHEREAS, “Block D” is designated as QGD-10-15 story receiving sites and as such is allowed to receive TDRs to increase its maximum building height to 15 stories or 206.7 feet, whichever is less, and increase its development capacity to a maximum of 3.75 Floor area ratio; and

WHEREAS, City acknowledges that the Governmental Center is an existing legal non-conforming, grandfathered structure which, in the event of destruction by windstorm, flood, or natural disaster, may be replaced by a new structure of the same or lesser size, and reoccupied by the same use, if such reconstruction is commenced within eighteen (18) months of destruction; and

WHEREAS, the City recognizes that 18 months may be insufficient for a governmental agency to design and perform repair and/or reconstruction of a public facility and has agreed to amend Section 94-104(a) of its Downtown Master Plan Urban Regulations to provide sufficient time to design and commence reconstruction of a public facility; and

WHEREAS, Section 163.01, Florida Statutes, permits public agencies to enter into Interlocal Agreements to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the County and City concur that it is in both parties’ best interests to effectuate this exchange.

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein the parties hereto agree as follows.

Section 1: Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2: Purpose

The purpose of this Agreement is to set forth the understanding and agreement between the County and the City regarding: (1) County relinquishing any real property rights and interest in the Golf Course Property; (2) City conveying City-owned Transfer of Development Rights (TDRs) sufficient to accommodate County’s projected future public facility program on “Block D”; and (3) City amending its development regulations to provide sufficient time to design and reconstruct a public facility in the event of destruction by windstorm, fire, flood or natural disaster.

Section 3: Conveyance of Golf Course Property

Within 10 days of the City's transfer of TDRs to County as provided on Section 4 hereof, the County shall provide City with a fully executed County Deed, in the form attached hereto as Exhibit C, conveying fee simple title to the City the County's interest in the Golf Course Property described in Exhibit A.

Section 4: Conveyance of TDRs

4.01 "Block D." County anticipates the future need to develop approximately 300,000 square feet of public facility(s) upon "Block D." Once the Downtown Action Committee approves conveyance pursuant to Sec. 94-132(d)(3) and City Commission approves pursuant to 94-133(h), City shall assign to County TDRs in an amount equivalent to 110,000 square feet of development capacity to allow County flexibility in building height to achieve its anticipated development program upon its "Block D" property. After assignment of the TDRs, Block D's maximum building height will increase to 15 stories or 206.7 feet, whichever is less, and its development capacity will increase to a maximum of 3.75 Floor area ratio.

4.02 The City represents and warrants to County that the TDRs transferred to the County for "Block D" shall be, non-revocable, shall not expire, and shall run with the land. City shall process any code changes necessary to allow transfer of the TDRs to County notwithstanding the fact that County does not have an active project or site plan. Upon issuance of the certificate of occupancy that finalizes construction on the site as per the site plan approved at the time, any unused TDRs are automatically forfeited and revert back to the City.

4.03 The transfer of the City-owned TDRs shall be at no cost to the County; shall be submitted to the City Commission for approval consistent with Sec. 94-133(h) of the City's Downtown Master Plan Urban Regulations; and once approved, City shall provide a certificate of transfer memorializing the transfer of the City-owned TDRs to "Block D" pursuant to Sec. 94-132(d)(4) of the City's Downtown Master Plan Urban Regulations.

4.04 County agrees to utilize the conveyed TDRs solely for a public facility(s) on Block "D." County shall be prohibited from transferring the conveyed TDRs to any other eligible receiving site(s) or from assigning or selling the conveyed TDRs to any third party.

Section 5: Restoration of Governmental Center after Destruction

Within 30 days of receipt of the County Deed referenced in Section 3 above, City shall process an amendment to Sections 94-104(a) of its Downtown Master Plan Urban Regulations to add a provision, permitting the owner of a public facility destroyed by windstorm, flood, fire, or other natural disaster to apply for a building permit for reconstruction so long as it is submitted to the Building Department within eighteen (18) months after the date of destruction, with the right to obtain a six (6) month administrative time extension. In processing the amendment, the City will schedule the proposed

amendment to be heard by the Downtown Action Committee and the Planning Board. After hearing before the Planning Board and the Downtown Action Committee, the first reading of the proposed amendment will be scheduled for consideration by the City Commission on the next regularly scheduled Commission meeting date, which shall be no later than 120 days after approval of the Interlocal Agreement by the City and the County.

Section 6: Specific Performance

After first engaging in the dispute resolution process outlined in Section 9 of this agreement and in the event either party to this Agreement fails or refuses to timely, fully and faithfully perform each and every term, covenant and condition on its part to be performed hereunder, which failure or refusal continues after written notice from the non-defaulting party and expiration of a reasonable period of time under the circumstances in which to cure said default, the same shall constitute a default hereunder. In addition to all rights and remedies which may be provided at law or in equity for such default, the non-defaulting party shall be entitled to seek specific performance by the defaulting party of such term covenant or condition.

Section 7: Notices

Any notice given pursuant to the terms of this Agreement shall be in writing and done by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to the County:

County Administrator
301 North Olive Avenue
West Palm Beach, FL 33401

Director, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411

With a copy to:

County Attorney's Office
301 North Olive Avenue
West Palm Beach, Florida 33401

As to City of West Palm Beach:

City Administrator, City of West Palm Beach
401 Clematis Street, 2nd Floor
West Palm Beach, FL 33401

With copy to:

City Attorney's Office
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401

Section 8: Applicable Law / Enforcement Costs

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a State court of competent jurisdiction located in Palm Beach County, Florida. In any litigation brought by a party to this Agreement to enforce the terms of this Agreement, each party shall bear its own costs and attorney's fees incurred in connection therewith. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.**

Section 9: Dispute Resolution

Disputes under this Agreement may be resolved by the County's Authorized Representative and City's Authorized Representative. If such Authorized Representatives are unable to reach a resolution and either party believes that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to both parties to conduct a non-binding mediation of the issues involved and make a recommendation to both parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that each party shall pay the mediator's fees and costs in equal amounts. If the non-binding mediation is also unsuccessful, the Board of County Commissioners and City Commission shall meet in a joint session with the purpose of resolving the issues. Should the Board of County Commissioners and the City Commission fail to resolve the issues, the parties may proceed to enforce the agreement in a court of competent jurisdiction rather than reengaging in the dispute resolution process outlined in Chapter 164, Florida Statutes.

Section 10: Filing

A copy of this Agreement shall be filed by Palm Beach County with the Clerk of the Circuit Court in and for Palm Beach County.

Section 11: Delegation of Duty

Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of any party.

Section 12: Time is of the Essence

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is specified or within a reasonable time if no time is specified.

Section 13: Force Majeure

Any party delayed by a Force Majeure Event, as defined herein, in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Agreement for the term of the delay due to the Force Majeure Event. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, or other natural disaster, explosion, tropical storm or hurricane, riot, sabotage, terrorist attack, windstorm, epidemic or pandemic, failure of utility service, or labor dispute or other causes beyond the reasonable control of the party claiming the Force Majeure Event.

Section 14: Non-Discrimination

The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the City warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, 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 or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

Section 15: Inspector General Audit Requirements

The 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 is authorized with the power to review past, present and proposed County and City contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County and the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a 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.

Section 16: Construction

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document

to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 17: No Third Party Beneficiary

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 City.

Section 18: Assignment

Neither County nor City may assign this Agreement in whole or in part, without prior written consent of the other party, which may be granted or withheld at the other party's absolute discretion.

Section 19: Severability

If any term of the Agreement or the application thereof to any person or circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 20: Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Section 21: Effective Date

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and the City Commission and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners and the City Commission.

Section 22. Entirety of Agreement

This Agreement, along with the Exhibits which are incorporated into this Agreement by this reference, represent the entire understanding between the parties, and supersedes

all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.

The remainder of this page intentionally left blank. Signatures on following page.

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

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

By: Anne Delgent
County Attorney for Houmad Falcon

By: Audrey Wolf
Audrey Wolf, Director
Facilities Development & Operations

ATTEST:

CITY CLERK

CITY OF WEST PALM BEACH, a
municipal corporation of the State of
Florida

By: _____
Hazeline Carson, City Clerk

By: _____
Keith A. James, Mayor

CITY ATTORNEY’S OFFICE
Approved as to form and legality

By: _____

**EXHIBIT A
GOLF PROPERTY LOTS**

Legal Descriptions

Marian Park, Plat Book 4, Page 52

Lots 19, 20, 230, 231, 236, 237, 336, 337, 377, 378, 379, 380

Marimont, Plat Book 14, Page 57

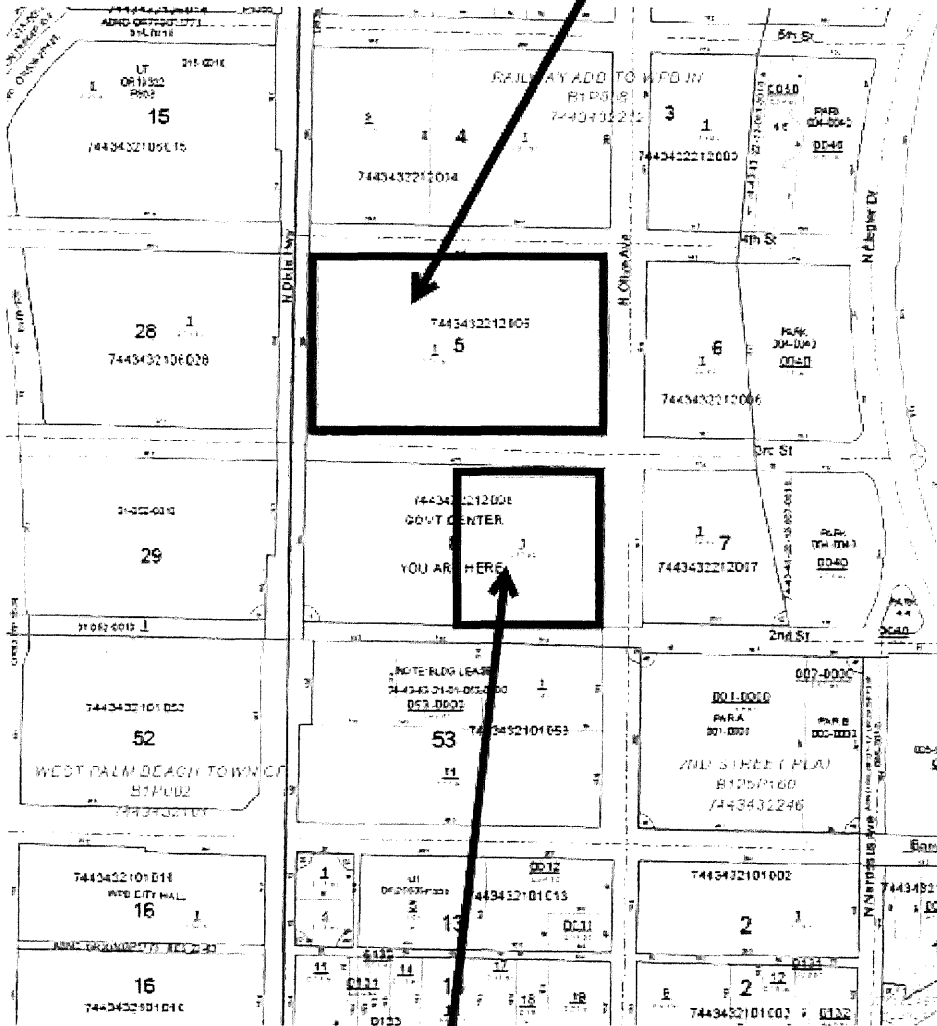
Lots 271, 282, 283, 284, 289, 290, 370, 371, 372, 373, 447, 448, 449, 507, 508, 523, 524, 527, 528, 606, 607, 608, 609, 679, 680, 772, 773

Woodlawn, Plat Book 10, Page 41

Lots 7, 8, 29, 30, 55, 56

EXHIBIT B
COUNTY PROPERTY

BLOCK "D"



GOVERNMENTAL CENTER

**EXHIBIT C
COUNTY DEED**

PREPARED BY AND RETURN TO:
PALM BEACH COUNTY
PROPERTY & REAL ESTATE MANAGEMENT DIVISION
2633 Vista Parkway
West Palm Beach, FL 33411-5605

PCN: _____
Closing Date: _____
Purchase Price: _____

COUNTY DEED

This COUNTY DEED, made _____, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose legal mailing address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605, "County", and the **CITY OF WEST PALM BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, whose legal mailing address is 401 Clematis St., West Palm Beach, FL 33401 "City".

W I T N E S S E T H:

That County, for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars to it hand paid by City, the receipt whereof is hereby acknowledged, has granted, bargained and sold to City, its successors and assigns forever, the following described land lying and being in Palm Beach County, Florida:

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A".

Reserving, however, unto County, its successors and assigns, an undivided three-fourths ($\frac{3}{4}$) interest in, and title in and to an undivided three-fourths ($\frac{3}{4}$) interest in, all the phosphate, minerals, and metals that are or may be in, on, or under the said land and an undivided one-half ($\frac{1}{2}$) interest in all petroleum that is or may be in, on, or under said land. The aforementioned reservation of phosphate, mineral, metals and petroleum rights shall not include and County hereby expressly releases any and all rights of entry and rights of exploration relating to such phosphate, mineral, metals and petroleum rights.

IN WITNESS WHEREOF, County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Mayor or Vice Mayor of said Board, the day and year aforesaid.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

(OFFICIAL SEAL)

By: *[Signature]*
Assistant County Attorney
For. A. Falcon

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**EXHIBIT A
LEGAL DESCRIPTION**

Marian Park, Plat Book 4, Page 52

Lots 19, 20, 230, 231, 236, 237, 336, 337, 377, 378, 379, 380

Marimont, Plat Book 14, Page 57

Lots 271, 282, 283, 284, 289, 290, 370, 371, 372, 373, 447, 448, 449, 507, 508, 523, 524, 527, 528, 606, 607, 608, 609, 679, 680, 772, 773

Woodlawn, Plat Book 10, Page 41

Lots 7, 8, 29, 30, 55, 56