

Agenda Item #: **3H-4**

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: **November 1, 2022** **Consent** **Regular**
 Ordinance **Public Hearing**

Department: **Facilities Development & Operations**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) adopt a Resolution authorizing the Mayor to request the Florida Department of Transportation to lease certain real property to the County for the purpose of providing public parking and access to Phil Foster Memorial Park; and


B) approve a Lease Agreement between Palm Beach County and the Florida Department of Transportation for the Blue Heron Bridge Causeway right-of-way property located adjacent to Phil Foster Memorial Park.

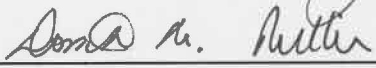
Summary: On April 12, 2002, the County entered into a 20-year Airspace Agreement (R2002-0358, Agreement) with Florida Department of Transportation (FDOT) for the causeway property underneath the Blue Heron Bridge adjoining Phil Foster Memorial Park for public park purposes. The Agreement was modified twice: the First Amendment (R2004-1458) provided for the launching of non-motorized vessels under the bridge; and the Second Amendment (R2022-0363) extended the term until such time as the terms and conditions for a new lease can be finalized. This proposed new Lease Agreement has a twenty (20) year term running from April 12, 2022 until April 11, 2042, and is not renewable. **(Property & Real Estate Management) District 7 (HJF)**

Background and Justification: The County has operated Phil Foster Memorial Park for over 50 years. In 1968, after the construction of the new Blue Heron Bridge, FDOT granted the County an easement over the northern half of the old causeway road for public parking and park access purposes. From 1968 to 2002 the public utilized the area underneath the bridge for swimming and boating access without a formal lease agreement in place. On April 12, 2002, the County entered into a 20-year Airspace agreement with FDOT for the causeway property in order to incorporate this area into the Park's overall master plan. This Lease Agreement grants the County continued use of the causeway right-of-way underneath the Blue Heron Bridge, including the public beach area and the old bridge/fishing pier.

Attachment:

- 1. Aerial Location Map
- 2. Resolution
- 3. Lease Agreement

Recommended By:  10/11/22
Department Director Date

Approved By:  10/20/2022
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	0	0	0	0	0
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No X _____

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

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

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

There is no fiscal impact associated with this item.

Fixed Asset Number:

C. Departmental Fiscal Review: [Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 10/13/22
 OFMB QA 10/13
 ESW
 10/13/22

[Signature] 10/17/22
 Contract Development and Control

B. Legal Sufficiency:

[Signature] 10/18/22
 Assistant County Attorney

C. Other Department Review:

[Signature]
 Department Director

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



56-43-42-27-00-000-1020

LOCATION MAP



RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA (COUNTY), AUTHORIZING THE MAYOR TO REQUEST THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) TO LEASE CERTAIN REAL PROPERTY TO PALM BEACH COUNTY FOR THE PURPOSE OF PROVIDING PUBLIC PARKING AND ACCESS TO PHIL FOSTER MEMORIAL PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, FDOT acquires properties for transportation facilities for the citizens of the State of Florida; and

WHEREAS, FDOT is permitted by law to lease real property that FDOT is not currently using and determines to be temporarily surplus to other public needs of the State of Florida; and

WHEREAS, the County can utilize FDOT's temporarily surplus property described on Exhibit "A", attached hereto and made a part hereof, for access and parking in connection with Phil Foster Park; and

WHEREAS, it is in the best interest of the citizens of the State of Florida to gain the most benefit from properties acquired with public funds; and

WHEREAS, the County is requesting FDOT lease to the County the temporarily surplus property described on the attached Exhibit "A"; and

WHEREAS, the temporarily surplus property is sought and proposed to be leased to the County for the purposes of providing public parking and access to Phil Foster Memorial Park and the public purpose of providing additional recreation for residents and visitors to Palm Beach County; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Recitals

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

Section 2. Request to Lease

The County requests FDOT to lease the temporarily surplus property described on the attached Exhibit "A" to the County pursuant to Section 337.25(5)(e), Florida Statutes.

Section 3. Use of Property

The temporarily surplus property to be leased to the County by FDOT will be used for the purpose of public parking and access to Phil Foster Memorial Park which will be in the best

interests of the general public and Palm Beach County.

Section 4. Adoption of Resolution

Upon adopting of this Resolution Palm Beach County shall forward an executed copy of this Resolution to Yvette Guerrero, Florida Department of Transportation, 3400 W. Commercial Blvd., Ft. Lauderdale, Florida 33309-3421. For further handling.

Section 5. Effective Date

The provisions of this Resolution shall be effect immediately upon adoption hereof.

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Commissioner District 1
- Commissioner District 2
- Commissioner District 3
- Commissioner District 4
- Commissioner District 5
- Commissioner District 6
- Commissioner District 7

The Mayor thereupon declared the resolution duly passed and adopted this _____ day of _____ 2022.

PALM BEACH COUNTY, a political subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

Attest:

Joseph Abruzzo, Clerk of the Circuit Court and Comptroller Palm Beach County

Palm Beach County, Florida, By Its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Mayor

Approved as to Form and Legal Sufficiency

Approved as to Terms & Conditions

By: 
Chief Assistant County Attorney

By: 
Department Director

DESCRIPTION SKETCH OF PHIL FOSTER PARK
LEASE AGREEMENT

A PARCEL OF LAND LYING IN SECTION 27, TOWNSHIP 42 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED IN DEED BOOK 901, PAGE 582 RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY (P.R.P.B.C.), FLORIDA, BEING THE SOUTHEAST CORNER OF PHIL FOSTER MEMORIAL PARK AS DEPICTED IN PALM BEACH COUNTY DRAWING # S-3-91-315 ON FILE IN THE OFFICE OF THE COUNTY ENGINEER; THENCE NORTH 87°13'15" EAST ALONG THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD A-1-A (BLUE HERON BOULEVARD) PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP (SECTION 93080-2506, SHEET #4) A DISTANCE OF 325 FEET; THENCE SOUTH 02°46'45" EAST TO THE SOUTH RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 300 FEET; THENCE SOUTH 87°13'15" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 1,446 FEET; THENCE NORTH 2°46'15" WEST TO THE NORTH RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 300 FEET; THENCE NORTH 87°13'15" EAST ALONG AFORE SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 1446 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE STATE ROAD A-1-A (BLUE HERON BOULEVARD) BRIDGE AND APPROACH BEING A STRIP OF LAND 96 FEET IN WIDTH LYING 48 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.


COMMENCE AT THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL; THENCE NORTH 87°13'15" EAST ALONG THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD A-1-A, A DISTANCE OF 325 FEET; THENCE SOUTH 2°46'45" EAST TO THE CENTERLINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 150 FEET AND THE POINT OF BEGINNING; THENCE SOUTH 87°13'15" WEST ALONG THE SAID CENTERLINE A DISTANCE OF 68 FEET TO A POINT OF CURVATURE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 2864.79 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 10°43'13" A DISTANCE OF 536.02 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE NORTHWEST, HAVING A RADIUS OF 2864.79 FEET AND A CENTRAL ANGLE OF 10°43'13"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 10°43'13", A DISTANCE OF 536.02 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 87°13'15" WEST ALONG THE TANGENT A DISTANCE OF 312.22 FEET TO A POINT OF TERMINATION. LESS THERE FROM LAND LYING WESTERLY OF THE EAST VERTICAL ABUTMENT WALL OF SAID BRIDGE.

TIES TO THE NORTHEAST CORNER OF SECTION 27 SHOWN ON PALM BEACH COUNTY DRAWING NUMBER S-3-91-315.

THIS INSTRUMENT PREPARED BY NORMAN J. HOWARD, P.S.M., FLORIDA CERTIFICATE # 5776, IN THE OFFICE OF THE COUNTY ENGINEER, PALM BEACH COUNTY ENGINEERING, SURVEY SECTION, 160 AUSTRALIAN AVENUE, ROOM 405, WEST PALM BEACH, FLORIDA 33406.

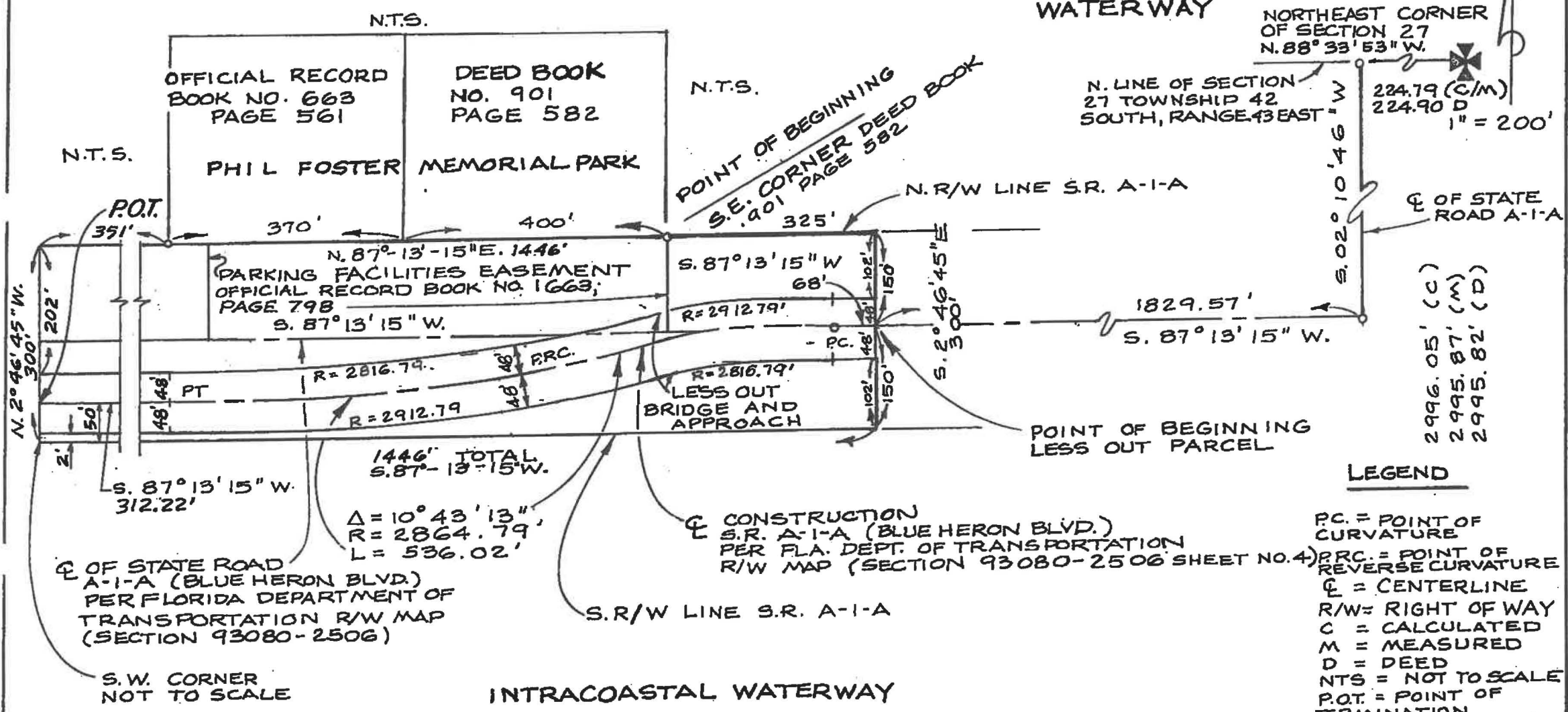
N. J. Howard

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SHEET NO. 2 OF 1	PROJECT: DESCRIPTION SKETCH OF PHIL FOSTER PARK LEASE AGREEMENT	NO. 1 REVISION: MOVE LEASE 306' WEST	BY DATE: N 5/30/01 H	 PALM BEACH COUNTY ENGINEERING AND PUBLIC WORKS ENGINEERING SERVICES 160 AUSTRALIAN AVENUE WEST PALM BEACH, FL 33406
	DESIGN FILE NAME: E0\TSEC6.DGN DRAWING NO.: S-1-97-1096	SCALE: 1" = 200' APPROVED: N.J.H. DRAWN: E.J.K. CHECKED: N.J.H. DATE: 10/31/96 FIELD BOOK NO.: N/A		

INTRACOASTAL WATERWAY

INTRACOASTAL WATERWAY

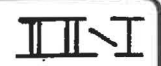


LEGEND

- PC. = POINT OF CURVATURE
- PRC. = POINT OF REVERSE CURVATURE
- CL = CENTERLINE
- R/W = RIGHT OF WAY
- C = CALCULATED
- M = MEASURED
- D = DEED
- NTS = NOT TO SCALE
- P.O.T. = POINT OF TERMINATION
- PT. = POINT OF TANGENCY

NOTES:

BEARINGS CITED HEREIN ARE BASED ON AN ASSUMED BEARING OF NORTH 87° 13' 15" EAST ON THE SOUTH LINE OF PARCEL DESCRIBED IN DEED BOOK 901, PAGE 582 (PUBLIC RECORD PALM BEACH COUNTY) AND THE NORTH RIGHT OF WAY LINE OF STATE ROAD NO. A-1-A (BLUE HERON BLVD.) PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP (SECTION 93080-2506 SHEET NO. 4)



PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ENGINEERING SERVICES
P.O. BOX 249, WEST PALM BEACH, FL

Revisions	By	Date
1	JAM	10/3/96
REVISION: MOVE LEASE N. 306 WEST H. 101		
Scale	1" = 200'	
Approved	JAM	
Drawn	EJK	
Checked	NJH	
Date	10/3/96	
Field Book	NA	

Project: DESCRIPTION SKETCH OF PHIL FOSTER PARK LEASE AGREEMENT
Drawing No. S-1-97-1096

Sheet: 2
Of: 2
Project No. 01-1030

Attachment #3
Lease Agreement & Addendum 2@ 11 pages Each

LEASE AGREEMENTITEM/SEGMENT NO.: 228962-1MANAGING DISTRICT: FourF.A.P. NO.: N/ASTATE ROAD NO.: 93080-2506COUNTY: Palm BeachPARCEL NO.: N/A - Excess #2204

THIS AGREEMENT, made this _____ day of _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and Palm Beach County, a political subdivision of the State of Florida, 301 North Olive Avenue, West Palm Beach, FL 33401 (hereinafter called the Lessee).

WITNESSETH:

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Property and Term.** Lessor does hereby lease unto Lessee the property described in Exhibit "A", attached and made a part hereof, for a term of twenty (20) years beginning _____ and ending 4/11/2042. This Lease may be renewed for an additional See Addendum term at Lessee's option, subject to the rent adjustment as provided in Paragraph 3 below. Lessee shall provide Lessor 180 days advanced written notice of its exercise of the renewal option.

If Lessee holds over and remains in possession of the property after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This Lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. **Use.** The leased property shall be used solely for the purpose of public parking and access. If the property is used for any other purpose, Lessor shall have the option of immediately terminating this Lease. Lessee shall not permit any use of the property in any manner that would obstruct or interfere with any transportation facilities.

Lessee will further use and occupy the leased property in a careful and proper manner, and not commit any waste thereon. Lessee will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the property. Lessee will not use or occupy said property for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies respecting the use and occupation of the leased property.

Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials on the leased property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Lessor, within the leased property. If any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the leased property, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Lessor from any claim, loss, damage, costs, charge, or expense arising out of any such contamination.

3. **Rent.** Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of \$0 plus applicable tax, for each N/A of the term. If this Lease is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any other amounts that may be owed to Lessor, shall be refunded to Lessee. Lessee shall pay any and all state, county, city, and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made payable to the Florida Department of Transportation and shall be sent to ATTN: Property Management, Florida Department of Transportation, 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309. Lessor reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions. Any installment of rent not received within ten (10) days after the date due shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. **Improvements.** No structures or improvements of any kind shall be placed upon the property without the prior written approval of the District Secretary for District Four of Lessor. Any such structures or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlord lien, any structures or improvements constructed by Lessee shall be removed by Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this

Lease and the leased property restored as nearly as practical to its condition at the time this Lease is executed. Portable or temporary advertising signs are prohibited.

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the leased property for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the leased property as now being in fit and tenable condition for all purposes of Lessee.

Lessor reserves the right to inspect the property and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole cost and expense.

5. Maintenance. Lessee shall keep and maintain the leased property and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this Lease, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable. Lessor shall have no duty to inspect or maintain any of the leased property or buildings, and other structures thereon, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the leased property for purposes of inspection, including conducting an environmental assessment. Such assessment may include: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which may be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the leased property. In the event of emergency due to a release or suspected release of hazardous waste on the property, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice, the sole cost and expense of which shall be the responsibility of the Lessee.

6. Indemnification. (select applicable paragraph)

Lessee is a Governmental Agency

To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Lessor and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its agents, or employees, during the performance of the Lease, except that neither Lessee, its officers, agents, or employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Lessor or any of its officers, agents, or employees during the performance of the Lease.

When the Lessor receives a notice of claim for damages that may have been caused by the Lessee, the Lessor will immediately forward the claim to the Lessee. Lessee and the Lessor will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Lessor will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Lessor in such claim as described in this section. The Lessor's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Lessor and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Lessee is not a Governmental Agency

Lessee shall indemnify, defend, save, and hold harmless Lessor, its agent, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees, (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend and pay for the defenses or at Lessor's option, to participate, and to associate with the Lessor in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Lessor's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Lessor is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Lessor solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by Lessor. Lessor's failure to notify Lessee of claim shall not release Lessee of the above duty to defend.

7. Insurance. Lessee at its expense, shall maintain at all times during the term of this Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the property arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than N/A _____ (\$ _____) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than N/A _____ (\$ _____) for property damage, or a combined coverage of not less than N/A _____ (\$ _____). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be

canceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the leased property.

Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the leased property and any improvements thereon fully insured against loss or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep the contents and personal property located on the leased property fully insured against loss or damage by fire or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including any residual interest in the Lease, or any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the leased property, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the leased property. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the leased property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Lease is still in existence on the date of taking or sale; or has been terminated prior thereto.

9. Miscellaneous.

a. This Lease may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by either party, without cause upon ninety (90) days prior written notice to the other party.

b. In addition to, or in lieu of, the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms, and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver, or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both parties.

d. Lessee shall not sublet the property or any part thereof, nor assign this Lease, without the prior consent in writing of the Lessor; this Lease is being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease, nor shall it be deemed as constituting consent of Lessor to such an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

f. This Lease shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to:
Palm Beach County Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605
Palm Beach County Attorney's Office, 301 North Olive Avenue, West Palm Beach, FL 33401
Palm Beach County Parks & Recreation Department, 2700 6th Avenue South, Lake Worth, Florida 33461

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

PALM BEACH COUNTY, a political subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Attest:

By: _____
District Four Secretary

Joseph Abruzzo, Clerk of the Circuit Court
And Comptroller Palm Beach County

Gerry O'Reilly, P.E.
Print Name

By: _____
Deputy Clerk

Attest: _____

Approved as to Form and Legal Sufficiency

By: 
Howard J. Falcon, III Chief Assistant County Attorney

Name/Title: Alia E. Chanel, Executive Secretary

Palm Beach County, Florida by
Its Board of County Commissioners

By: _____
Mayor

LEGAL REVIEW:

Approved as to Terms & Conditions

By: 
Isami Ayala-Collazo, Director
Facilities Development & Operations

District Counsel

Elizabeth Quintana
Print Name

ADDENDUM

This is an Addendum to that certain Lease Agreement between Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida and the State of Florida Department of Transportation dated the _____ day of _____, _____. In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (b) of said Agreement

1. This Agreement is not renewable. At the end of the twenty (20) year period, Lessee may request to enter into a new lease with Lessor. Said request shall be subject to approval by the Lessor.
2. A construction agreement (permit) is required for the new amenities to be constructed after the execution of this lease. See Exhibit "C" for the proposed amenities in red.
3. This lease is subject to all utilities remaining in place and in use or relocated at the expense of Lessee.
4. Lessee acknowledges that the leased property cannot be and is not being used for site plan approval in conjunction with any development order, permits, or any other governmental requirements.
5. Any changes in the use of or improvements/alterations made on or to the leased property shall require a permit issued from Lessor's Permits Office and/or a lease amendment, as applicable. Lessor will advise Lessee of the appropriate document upon request.
6. Lessee shall not obtain any grant, award, donation, endowment, subsidy, or allotment, on, over, or including the leased property for any reason, including approval of site plans for development of the property adjacent to, or part of, the leased property without prior written approval from Lessor. Written approval may be provided by letter, or email between the parties. If as a result of the terms of the lease, including termination of the lease, Lessee shall suffer losses or damages under any grant, award, subsidy or allotment applied for or received by Lessee for the leased property, Lessor shall not be liable for such losses or damages. Lessee hereby releases Lessor of and from any and all manner of actions, causes of action, suits, claims and demands whatsoever, in law or in equity, which Lessee may have against Lessor, its agents, administrators, managers, officers, employees and representatives, relating or arising from such losses or damages suffered by Lessee. Lessor does not endorse the legality of any grants, awards, donation, endowment, subsidy, or allotment, obtained by Lessee before, or after the date of this lease agreement.
7. Lessee agrees that this lease shall not be recorded in the public records without the express written consent of the Lessor.
8. Lessee agrees to provide Lessor with a copy of any local, state, or federal permit(s) obtained that include the leased property.
9. Nothing is permitted to be discharged into drains/inlets on or adjacent to the leased property, if applicable.
10. Lessee agrees to maintain the leased property, including the recently renovated old Blue Heron Bridge that now serves as a public fishing pier. Lessee shall be responsible for any ongoing repair and/or removal of the fishing pier structure if it becomes necessary in the future.
11. Lessee will be responsible for all new and previously installed improvements constructed within Lessor's right-of-way, including, and not limited to the two turnouts at Phil Foster Memorial Park that are approximately 500 feet apart, for the purpose of traffic flow control.
12. Signs shall be placed conspicuously on all sides of the bridge pilings indicating that launching, landing, or mooring of boats is prohibited. Temporary or permanent attachments to the bridge structures is also prohibited. The specific area designated "Authorized Personnel Only" shall also include appropriate wording to allow for launching of non-motorized watercraft, 20 feet or less in length only, as approved by the Lessor. No commercial watercraft access shall be allowed, nor any type of commercial activity be permitted within Lessor's right-of way. Signs shall also be erected that no watercraft shall be allowed on the beach unattended. Lessee shall provide for removal of said watercraft.
13. There shall be no commercial business activity permitted within Lessor's right-of-way, and signage to this effect must be continued. Lessee maintenance of Lessor's structure shall include keeping them free of graffiti.
14. The installation, moving or replacing of buoys within Lessor's right-of-way shall be accomplished through legal permitting process only. Lessee shall solely be responsible for the protection of seagrass beds offshore within Lessor's right-of-way and defend them from harm to the extent permitted by law. There may be no additional mangrove planting, or plantings of any nature within Lessor's right-of-way that would require wetland mitigation in the event of a future FDOT roadway or bridge project.
15. Lessor shall not be held responsible for the replacement of or damage to any of Lessee's improvements within the Lessor's right-of-way while performing inspections, maintenance or related activities.

16. The launch area, entry and exit shall be marked and will not encroach into the public swimming area. Launching activity may be temporarily suspended if and when Lessor's bridge maintenance activities are in effect in the area lying within leased property and as further highlighted in Exhibit "B" which is a conceptual master plan.
17. Lessee shall be solely responsible for supervising beach area activity in accordance with local ordinances. Warning signs shall be placed in such a manner to ward off unlawful use of the public beach.
18. At no time shall Lessor be called upon regarding disputes of permitting that may arise as a result of Lessee's use of the area for launching small non-motorized watercraft or for that area designated for public bathing, where watercraft is prohibited at all times.
19. During construction the Lessee shall have contractor(s) name the Lessor as additional insured and provide Lessor with proof thereof.
20. Lessee shall rip-rap the area located at the northeast quadrant of the leased property as designated in the Department approved conceptual master plan. Any changes to the conceptual master plan within the leased property must be Department approved in writing.
21. The area is a potential nesting habitat for the piping plover. Due to the proposed installation of roll-out accessibility mats on the beach, consultation with the USFWS may be required under Section 7 of the Endangered Species Act.
22. Section 3, Rent, second to last sentence is hereby replaced with the following: Lessor reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions applies to public purpose with a commercial end-use.
23. Section 4, Improvements, first sentence on last paragraph, is hereby replaced with the following: Lessor reserves the right to inspect the property and to require reasonable adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole cost and expenses.
24. Section 6, Indemnification, last paragraph, after third sentence, the following is added: Notwithstanding the previous sentence, Lessee shall have the right, at its sole option, to elect to defend any claim which Lessee is responsible for pursuant to this lease.
25. The upcoming Blue Heron Deck Replacement project (445769-1) will affect the leased property. Lessor & Lessee desire to work collaboratively during the project. Said project will necessitate a temporary suspension of the lease occupancy provisions. The parties, therefore, desire to modify the lease as provided below:
 - a. Lessor agrees to provide a minimum of 30-day notice to Lessee for the removal of any items or personal property and the vacating of the premises in this regard.
 - b. Lessee shall be responsible for removing any and all improvements from the leased property upon written notification from the Lessor.
 - c. Lessee shall not be allowed to occupy the leased property while construction is underway; however, Lessee may return as soon as the Lessor gives written notice when the Lessee may re-occupy the leased property. Construction is scheduled to commence on or about April 2023.
 - d. Lessor, it's agents or assigned shall be responsible for blocking off the beach area, playground, and sidewalks under the bridge while construction is underway.
 - e. Lessee shall be responsible for the removal of all items and personal property from the leased property. Lessee is also responsible for any expenses related to the return of all items and personal property.
 - f. Lessee shall not store any items or personal property on Department-owned property. Such items and personal property shall be stored off-site at the expense of the Lessee.
 - g. Item #25 shall become null and void upon completion of the project and written notification to Lessee by Lessor.

SIGNATURES ON THE FOLLOWING PAGE

PALM BEACH COUNTY, a political subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

Attest:

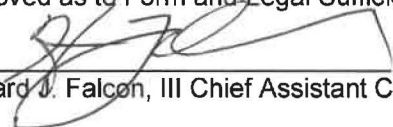
Joseph Abruzzo, Clerk of the Circuit Court
and Comptroller Palm Beach County

By: _____
Deputy Clerk

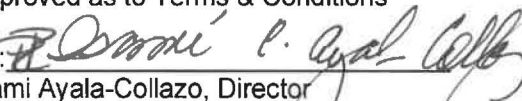
Palm Beach County, Florida, By
Its Board of County Commissioners

By: _____
_____, Mayor

Approved as to Form and Legal Sufficiency

By: 
Howard J. Falcon, III Chief Assistant County Attorney

Approved as to Terms & Conditions

By: 
Isami Ayala-Collazo, Director
Facilities Development & Operations

LESSOR SIGNATURES

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
District Four Secretary

Gerry O'Reilly, P.E.
Print Name

Attest: _____

Name/Title: Alia E. Chanel, Executive Secretary

LEGAL REVIEW:

District Counsel

Elizabeth Quintana
Print Name

DESCRIPTION SKETCH OF PHIL FOSTER PARK
LEASE AGREEMENT

A PARCEL OF LAND LYING IN SECTION 27, TOWNSHIP 42 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED IN DEED BOOK 901, PAGE 582 RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY (P.R.P.B.C.), FLORIDA, BEING THE SOUTHEAST CORNER OF PHIL FOSTER MEMORIAL PARK AS DEPICTED IN PALM BEACH COUNTY DRAWING # S-3-91-315 ON FILE IN THE OFFICE OF THE COUNTY ENGINEER; THENCE NORTH 87°13'15" EAST ALONG THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD A-1-A (BLUE HERON BOULEVARD) PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP (SECTION 93080-2506, SHEET #4) A DISTANCE OF 325 FEET; THENCE SOUTH 02°46'45" EAST TO THE SOUTH RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 300 FEET; THENCE SOUTH 87°13'15" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 1,446 FEET; THENCE NORTH 2°46'15" WEST TO THE NORTH RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 300 FEET; THENCE NORTH 87°13'15" EAST ALONG AFORE SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 1446 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE STATE ROAD A-1-A (BLUE HERON BOULEVARD) BRIDGE AND APPROACH BEING A STRIP OF LAND 96 FEET IN WIDTH LYING 48 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.


COMMENCE AT THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL; THENCE NORTH 87°13'15" EAST ALONG THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD A-1-A, A DISTANCE OF 325 FEET; THENCE SOUTH 2°46'45" EAST TO THE CENTERLINE OF SAID STATE ROAD A-1-A, A DISTANCE OF 150 FEET AND THE POINT OF BEGINNING; THENCE SOUTH 87°13'15" WEST ALONG THE SAID CENTERLINE A DISTANCE OF 68 FEET TO A POINT OF CURVATURE, CONCAVE SOUTHEAST, HAVING A RADIUS OF 2864.79 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 10°43'13" A DISTANCE OF 536.02 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE NORTHWEST, HAVING A RADIUS OF 2864.79 FEET AND A CENTRAL ANGLE OF 10°43'13"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 10°43'13", A DISTANCE OF 536.02 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 87°13'15" WEST ALONG THE TANGENT A DISTANCE OF 312.22 FEET TO A POINT OF TERMINATION. LESS THERE FROM LAND LYING WESTERLY OF THE EAST VERTICAL ABUTMENT WALL OF SAID BRIDGE.

TIES TO THE NORTHEAST CORNER OF SECTION 27 SHOWN ON PALM BEACH COUNTY DRAWING NUMBER S-3-91-315.

THIS INSTRUMENT PREPARED BY NORMAN J. HOWARD, P.S.M., FLORIDA CERTIFICATE # 5776, IN THE OFFICE OF THE COUNTY ENGINEER, PALM BEACH COUNTY ENGINEERING, SURVEY SECTION, 160 AUSTRALIAN AVENUE, ROOM 405, WEST PALM BEACH, FLORIDA 33406.

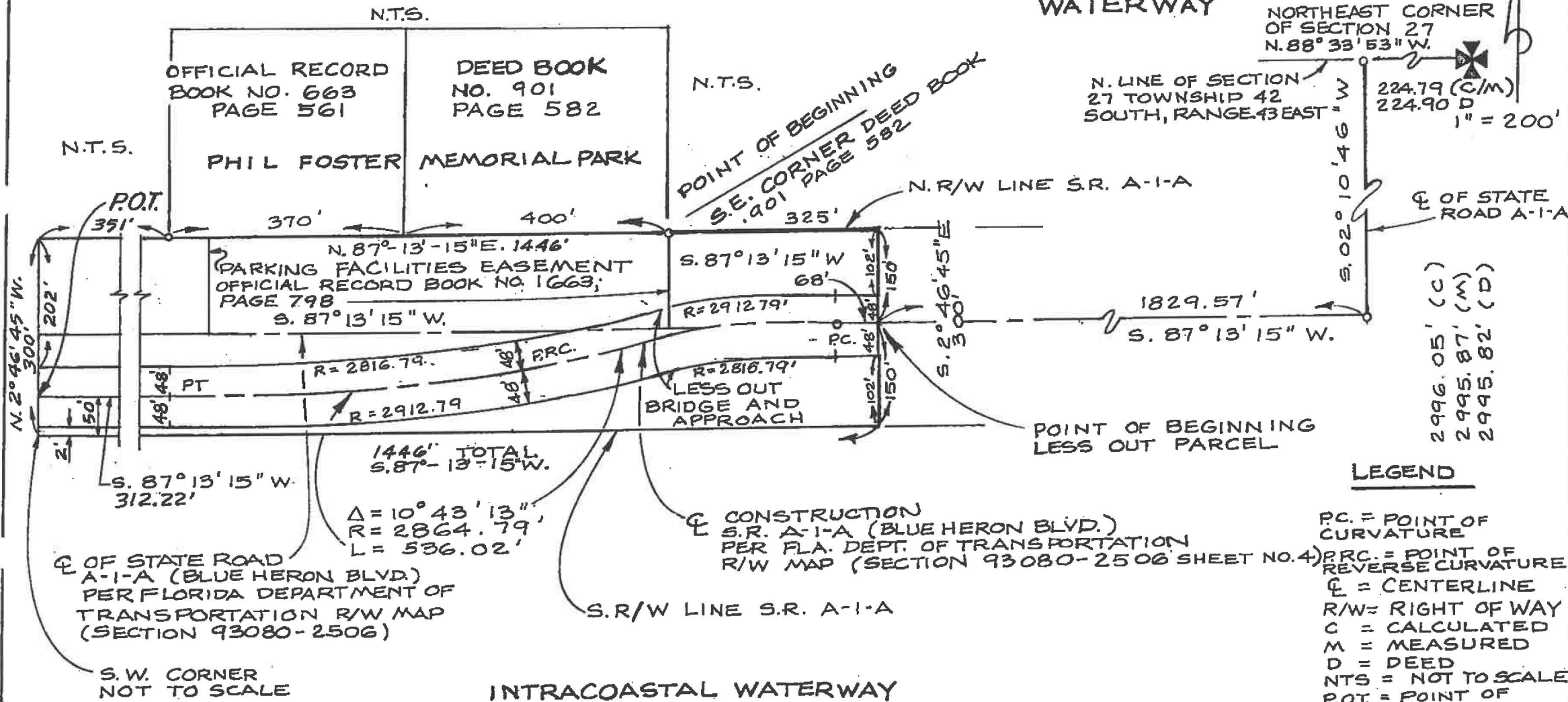
N. Howard

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

PROJECT NO. 02020	SHEET 1	PROJECT: DESCRIPTION SKETCH OF PHIL FOSTER PARK LEASE AGREEMENT		SCALE: 1" = 300'	NO. 1	REVISION	BY	DATE	 PALM BEACH COUNTY ENGINEERING AND PUBLIC WORKS ENGINEERING SERVICES 160 AUSTRALIAN AVENUE WEST PALM BEACH, FL 33406
		DESIGN FILE NAME: E0\TSEC6.DGN	DRAWING NO.: S-1-97-1096			DATE: 10/31/96	MOVE LEASE 306' WEST	N	
				APPROVED: N.J.H. DRAWN: E.J.K. CHECKED: N.J.H.					

INTRACOASTAL WATERWAY

INTRACOASTAL WATERWAY



LEGEND

- PC = POINT OF CURVATURE
- PRC = POINT OF REVERSE CURVATURE
- C = CENTERLINE
- R/W = RIGHT OF WAY
- C = CALCULATED
- M = MEASURED
- D = DEED
- NTS = NOT TO SCALE
- P.O.T. = POINT OF TERMINATION
- PT. = POINT OF TANGENCY

NOTES:

BEARINGS CITED HEREIN ARE BASED ON AN ASSUMED BEARING OF NORTH 87° 13' 15" EAST ON THE SOUTH LINE OF PARCEL DESCRIBED IN DEED BOOK 901, PAGE 582 (PUBLIC RECORD PALM BEACH COUNTY) AND THE NORTH RIGHT OF WAY LINE OF STATE ROAD NO. A-1-A (BLUE HERON BLVD.) PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP (SECTION 93080-2506 SHEET NO.4)

PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ENGINEERING SERVICES
P.O. BOX 1409, WEST PALM BEACH, FL

By Date	JAM
Revisors	MOVE LEASE N. 306' WEST H. 101
Rev	1
Scale	1" = 200'
Approved	JAM
Drawn	NJK
Checked	NJH
Date	10/31/96
Field Book No.	NA

Project
DESCRIPTION SKETCH OF PHIL FOSTER PARK LEASE AGREEMENT
Drawing No. S-1-97-1096

Sheet	2
Of	2
Project No.	01-123

EXHIBIT "B"

CONCEPTUAL MASTER PLAN PHIL FOSTER PARK

DATE: 8/20/99
REVISED: 6/01
REVISED: 8/6/01



PALM BEACH COUNTY
PARKS & RECREATION DEPARTMENT

DESIGNED BY: T. SHANOWITZ
DRAWN BY: M. NECLUND
DATE: 8/30/99
APPROVED BY: BILL WELSHER

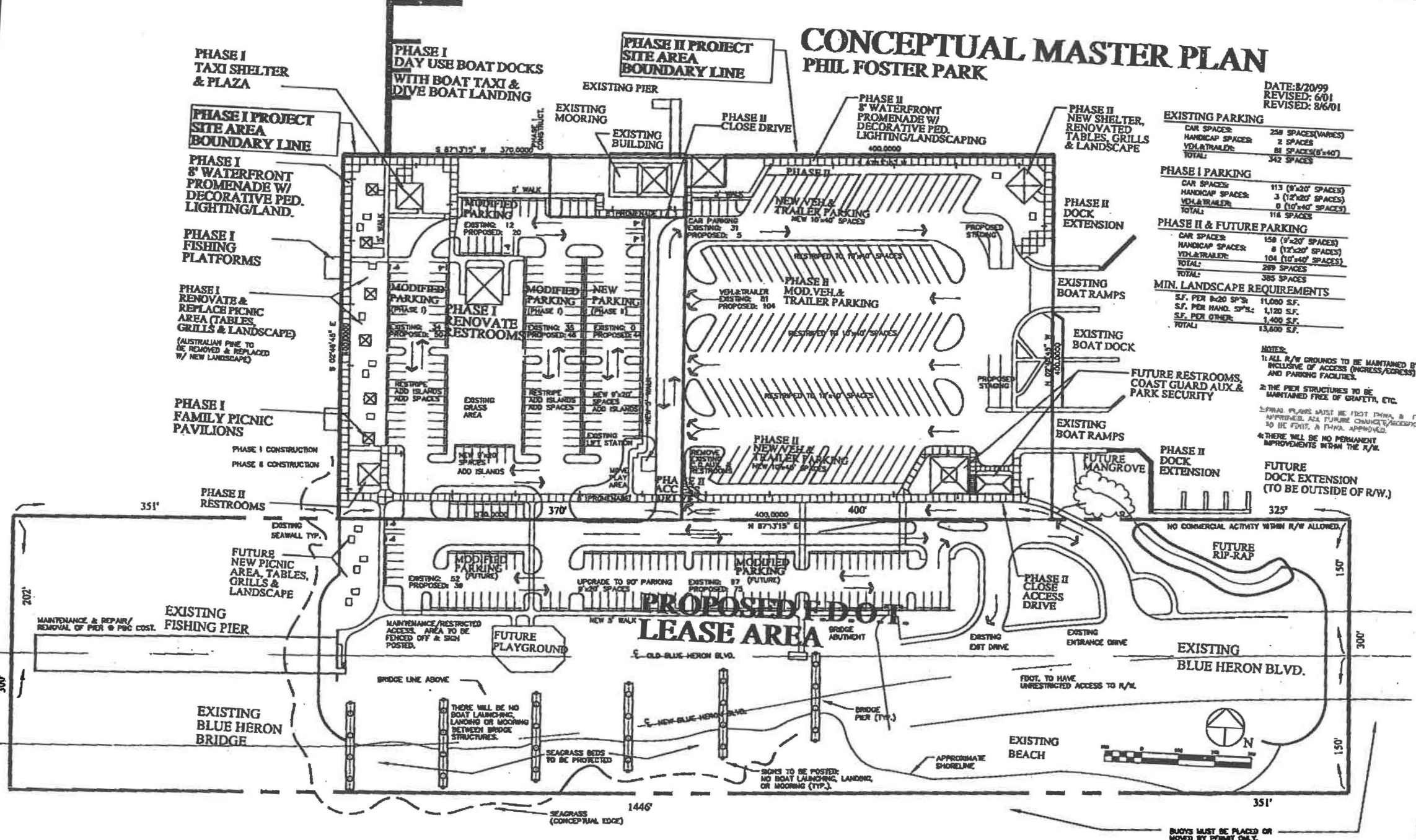
PHIL FOSTER PARK IMPROVEMENTS CONCEPTUAL MASTER PLAN

REVISIONS
FDOT: 6/01
FDOT AGREE: 8/6/01

NORTH ARROW

SCALE: N.T.S.

SHEET NO.



EXISTING PARKING	
CAR SPACES:	258 SPACES (VARIES)
HANDICAP SPACES:	2 SPACES
VEHICLE/TRAILER:	81 SPACES (8'x40')
TOTAL:	342 SPACES

PHASE I PARKING	
CAR SPACES:	113 (8'x20' SPACES)
HANDICAP SPACES:	3 (12'x20' SPACES)
VEHICLE/TRAILER:	0 (10'x40' SPACES)
TOTAL:	116 SPACES

PHASE II & FUTURE PARKING	
CAR SPACES:	158 (8'x20' SPACES)
HANDICAP SPACES:	8 (12'x20' SPACES)
VEHICLE/TRAILER:	104 (10'x40' SPACES)
TOTAL:	269 SPACES

MIN. LANDSCAPE REQUIREMENTS	
S.F. PER 8x20 SPACES:	11,000 S.F.
S.F. PER HAND. SPACES:	1,120 S.F.
S.F. PER OTHER:	1,400 S.F.
TOTAL:	13,600 S.F.

- NOTES:
- 1: ALL R/W GROUNDS TO BE MAINTAINED BY PBC INCLUSIVE OF ACCESS (INGRESS/EGRESS) AND PARKING FACILITIES.
 - 2: THE PIER STRUCTURES TO BE MAINTAINED FREE OF GRAFFITI, ETC.
 - 3: PIRAL PLANS MUST BE FDOT PDMA & FDOT APPROVED. ALL FUTURE CHANGES/ADDITIONS TO BE FDOT & PDMA APPROVED.
 - 4: THERE WILL BE NO PERMANENT IMPROVEMENTS WITHIN THE R/W.

FUTURE DOCK EXTENSION (TO BE OUTSIDE OF R/W.)

NO COMMERCIAL ACTIVITY WITHIN R/W ALLOWED.

FUTURE RIP-RAP

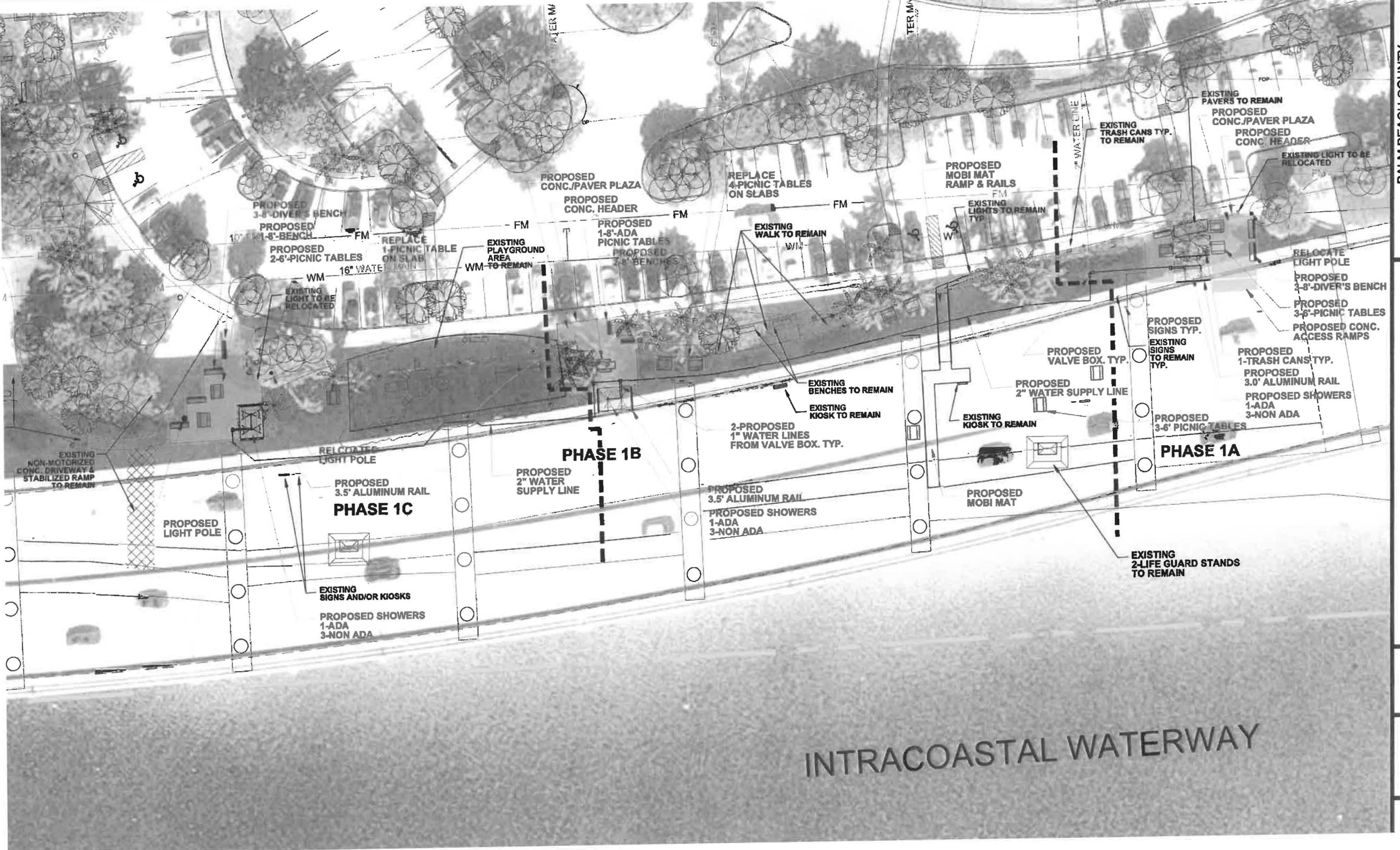
PHASE II CLOSE ACCESS DRIVE

EXISTING BLUE HERON BLVD.

EXISTING BEACH



BOYS MUST BE PLACED OR MOVED BY POINT ONLY.



PROPOSED 3-8' DIVER'S BENCH

PROPOSED 10' FM 1-8' BENCH

PROPOSED 2-6' PICNIC TABLES

WM 18" WATER MAIN

EXISTING LIGHT TO BE RELOCATED

EXISTING NON-MOTORIZED CONC. DRIVEWAY & STABILIZED RAMP TO REMAIN

PROPOSED LIGHT POLE

PROPOSED 3.5' ALUMINUM RAIL
PHASE 1C

EXISTING SIGNS AND/OR KIOSKS
PROPOSED SHOWERS
1-ADA
3-NON ADA

PROPOSED CONC./PAVER PLAZA
PROPOSED CONC. HEADER

PROPOSED 1-8' ADA PICNIC TABLES
PROPOSED 7-8' BENCHES

EXISTING PLAYGROUND AREA
WM TO REMAIN

PHASE 1B

PROPOSED 2" WATER SUPPLY LINE

REPLACE 4 PICNIC TABLES ON SLABS

EXISTING WALK TO REMAIN

2-PROPOSED 1" WATER LINES FROM VALVE BOX. TYP.

PROPOSED 3.5' ALUMINUM RAIL
PROPOSED SHOWERS
1-ADA
3-NON ADA

EXISTING BENCHES TO REMAIN
EXISTING KIOSK TO REMAIN

PROPOSED MOBI MAT RAMP & RAILS

EXISTING LIGHTS TO REMAIN TYP.

EXISTING KIOSK TO REMAIN

PROPOSED MOBI MAT

EXISTING TRASH CANS TYP. TO REMAIN

PROPOSED VALVE BOX. TYP.

PROPOSED 2" WATER SUPPLY LINE

PROPOSED SIGNS TYP.
EXISTING SIGNS TO REMAIN TYP.

PROPOSED 3-6' PICNIC TABLES

PHASE 1A

PROPOSED 1-TRASH CANS TYP.
PROPOSED 3.0' ALUMINUM RAIL
PROPOSED SHOWERS
1-ADA
3-NON ADA

EXISTING 2-LIFE GUARD STANDS TO REMAIN

EXISTING PAVERS TO REMAIN
PROPOSED CONC./PAVER PLAZA
PROPOSED CONC. HEADER

EXISTING LIGHT TO BE RELOCATED

RELOCATE LIGHT POLE

PROPOSED 3-8' DIVER'S BENCH

PROPOSED 3-6' PICNIC TABLES
PROPOSED CONC. ACCESS RAMPS

INTRACOASTAL WATERWAY