

CITY OF FORT PIERCE

Florida



Office of the City Clerk

City Hall, 100 North US 1
P.O. Box 1480 Fort Pierce, FL 34954-1480
(772) 467-3052 • www.CityOfFortPierce.com

March 23, 2016

Foglia Contracting Group
1555 Indian River Blvd, Unit B141
Vero Beach, FL 32960

Dear Mr. Foglia:

On Monday, March 21, 2016, the City Commission considered an application Conditional Use with New Construction and Design Review, a Zoning Atlas Amendment and two right-of-way abandonments submitted by Foglia Contracting Corp. to construct a multi-family development at 401 & 411 S. Indian River Drive.

The application was approved with the following conditions:

1. The City clarify the bulkhead line regulations.
2. The property is deeded to separate the west side from the east side of 401 & 411 S Indian River Drive.
3. Provide easements for all FPUA utilities.
4. **City adopts a resolution that authorizes a Quit Claim Deed for the property requested in the abandonment application.**

Very truly yours,

A handwritten signature in cursive script that reads "Linda W. Cox".

Linda W. Cox
City Clerk

cc: Rebecca Grohall, Planning Manager

TMH, LLC

2277 North Circle Drive
Palatine, IL 60067

TA1 (IRD) LLC

266 Park Drive
Palatine, IL, 60067

RESOLUTION NO. 16-R33

A RESOLUTION OF THE CITY OF FORT PIERCE, FLORIDA AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY NOT NEEDED FOR A PUBLIC PURPOSE OWNED BY THE CITY OF FORT PIERCE, FL TO TAI, LLC AND TMH, LLC IN EXCHANGE FOR CERTAIN OFF-SITE IMPROVEMENTS AS OUTLINED IN A PROPOERTY DISPOSITION AGREEMENT (EXHIBIT A); DIRECTING THE SUCH SALE CONFORMS WITH THE CITY CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fort Pierce, Florida owns certain real property not needed for a public purpose (the "Property"), generally located at approximately 401 Indian River Drive and legally described as:

A PARCEL OF LAND BEING PART OF LOTS 1 AND 2, BLOCK D, ANDREWS AND RICHARDS RE-SUBDIVISION, AS PER THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 191, ST. LUCIE COUNTY, FLORIDA, PUBLIC RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 1, BLOCK D, RUN SOUTH 89°54'45" EAST (BASIS OF BEARINGS) ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 172.48 FEET; THENCE CONTINUE SOUTH 89°54'45" EAST, A DISTANCE OF 61.38 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 12°04'45"EAST A DISTANCE OF 178.64 FEET TO THE SOUTH LINE OF SAID LOT 2, BLOCK D; THENCE RUN ALONG SAID SOUTH LINE NORTH 89°51'32" WEST, A DISTANCE OF 29.76 FEET TO THE MONUMENTED EAST RIGHT OF WAY LINE OF INDIAN RIVER DRIVE (A VARIABLE WIDTH RIGHT OF WAY); THENCE RUN NORTH 11°43'16" WEST ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 52.07 FEET; THENCE LEAVING SAID EAST RIGHT OF WAY LINE RUN NORTH 01°27'42" EAST, A DISTANCE OF 123.67 FEET TO THE POINT OF BEGINNING. AND EXCEPTING FROM ABOVE ALL RIGHTS OF WAY FOR PUBLIC ROADS.

WHEREAS, the City issued Bid No. 2016-026, seeking bids for the Property; and

WHEREAS, at its meeting on July 5, 2016, the City Commission of the City of Fort Pierce, Florida awarded the bid on the Property to TAI, LLC/TMH, LLC (the "Company") in exchange for proposed off-site improvements on Citrus Avenue valued at \$248,000.00.

WHEREAS, the City of Fort Pierce Charter specifically authorizes the sale of City property for such price and upon such terms and conditions as deemed proper by the City Commissioners, and also provides that no conveyance shall be made unless notice of such conveyance shall be advertised in a newspaper of general circulation, published in said City, once a week for two consecutive weeks; and

WHEREAS, the City Clerk has caused to be advertised the intended conveyance once a week for two consecutive weeks in a newspaper of general circulation published in the City.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AS FOLLOWS:

Section 1. The City Commission of the City of Fort Pierce, Florida, authorizes the sale, by quit claim deed, of the Property to the Company.

Section 2. The Property shall be sold to the Company in exchange for certain off-site improvements consisting of a public access waterfront park with kayak launch pad, storm water improvements and parking on Citrus Avenue, valued at \$248,000.00 as outlined in the Property Disposition Agreement (Exhibit A).



Section 3. The Mayor, City Clerk, and City Attorney are hereby authorized and directed to take all actions necessary to consummate the transfer of the Property to the Company.

Section 4. This Resolution shall become effective immediately upon its adoption.

IN WITNESS WHEREOF, this Resolution has been duly adopted on this 18th day of July, 2016.

Linda Hudson, Mayor

ATTEST:

Linda Cox, City Clerk

Approved as to Form
And Correctness:

James M. Messer, Esq.
City Attorney

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EXHIBIT A

Property Disposition Agreement Attached

PROPERTY DISPOSITION AGREEMENT

This Property Disposition Agreement ("Agreement") dated this _____ day of _____, 2016, is by and between The City of Fort Pierce, a Florida municipal corporation, whose mailing address is Post Office Box 1480, Fort Pierce, Florida 34954 ("City"), and TA1(IRD), LLC, a Florida corporation, with its principal place of business at 266 Park Drive, Palatine, IL, 60067; and TMH, LLC, an Illinois corporation, with its principal place of business at 1515 E. Woodfield Rd., Ste. 250, Schaumburg, IL 60173 (TA1(IRD), LLC and TMH, LLC are collectively referred to as "Developers"); (City and Developers singularly, "Party", and, collectively, "Parties").

WITNESSETH:

WHEREAS, pursuant to the powers provided by Article I, Section 13 of the City Charter, City has declared as surplus a portion of City real property more fully described in Exhibit A ("Surplus Property") and requested formal bids for purchase of the Surplus Property by posting an Invitation to Bid, Bid No. 2016-026; and

WHEREAS, Developers are the owner of real property in the City ("Developers' Property") which is adjacent to the Surplus Property, and Developers submitted a bid on June 21, 2016, in response to the Invitation to Bid, which proposed improvements to adjacent City property as outlined in Exhibit B ("Enhancements") in exchange for the Surplus Property; and

WHEREAS, the City Commission previously approved Developers' development plan to build residential units on Developers' Property as shown in Exhibit C ("Development Plan"), and the development by Developers as proposed and planned cannot be accomplished without unfettered ownership and use of the Surplus Property; and

WHEREAS, City believes that the Enhancements and development will enhance the City and inspire further economic development within the City, provide jobs for the City, and add to the City's ad valorem tax base; and

WHEREAS, this Agreement is made by the Parties to insure that the transfer of Surplus Property to Developers takes place only in exchange for the agreed Enhancements, and Developers will post a good and sufficient payment and performance bond therefor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other valuable considerations received, the receipt and sufficiency of which being acknowledged, the Parties mutually agree as follows:

1. Recitals. The foregoing recitals are hereby adopted and incorporated herein.
2. Developers' Obligations. As consideration for the City's conveyance of the Surplus Property to the Developers, the Developers agree to perform as follows:
 - a. Developers' performance of the Enhancements shall (1) conform to the specifications and requirements of that certain Invitation to Bid, Bid No. 2016-026 ("Invitation to Bid"), which is incorporated by reference for all purposes, and (2) to the extent consistent with the RFP,

shall conform with Developers' Bid Response, dated June 21, 2016 ("Developers' Bid") which was submitted by Developers in response to the Invitation to Bid and is incorporated by reference herein for all purposes. To the extent that the Initiation to Bid or Developers' Bid conflicts with the terms of this Agreement, the terms of this Agreement shall control. To the extent that the Developers' Bid conflicts with the Invitation to Bid, the Invitation to Bid shall control.

- b. Developers agree to provide design and construction services for the Enhancements and the Enhancements shall be owned by the City, including installed infrastructure and the improvements.
 - c. Developers warrant that they will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Developers' performance of this Agreement.
 - d. Developers shall complete the Enhancements within eighteen (18) months following issuance of requisite City permit approvals.
 - e. Developers, at their sole cost and expense, shall apply for, and obtain, a payment and performance bond in favor of the City for the face amount of \$250,000, (the "Bond") to secure Developers' performance, and which represents the estimated value of the Enhancements as outlined in Exhibit B.
 - f. The Bond shall remain in full force and effect while Developers complete the Enhancements. Developers shall terminate the Bond upon satisfactory completion of the Enhancements, and following written notice to the City advising of project completion and request for inspection. The City shall have 10 days following such notice, unless otherwise mutually extended, to inspect the Enhancements and to advise, in writing, of any project deficiency. In the event the Developers fail to receive a statement of project deficiency from the City within the 10 day period, on the 11th day following Developers' notice of completion, the Developers may cancel the Bond.
 - g. In the event the Developers receive a statement of project deficiency within the 10 days following Developers' notice of completion, the Developers, or their contractor, shall meet with City management to discuss Developers' plan to remedy such deficiency. In this event, the Developers shall be given a reasonable time following the meeting to remedy the deficiency to the City's satisfaction. During this curative period, the payment and performance Bond shall remain in full force and effect.
3. City Obligations. As consideration for the Enhancements committed for construction, and secured by Bond of the Developers, the City agrees to perform as follows:
- a. The City acknowledges that it is neither feasible nor practical for the Developers to commence construction upon property of which it is not the record titleholder. Therefore, the payment and performance Bond secured by Developers for the City's protection shall serve as good and sufficient inducement for the City to convey the Surplus Property by quit claim deed, so that Developers can commence work on all of the subject property per the approved Site Plan.
 - b. Upon issuance of the performance Bond, the City shall cause the Surplus Property to be conveyed, by quit claim deed, to Developers. To assist Developers in the Enhancements, the

except to timely and fairly apply due process to their applications for permit approvals as may be occasioned by this Agreement.

7. Indemnity. Developers shall indemnify, defend and hold harmless, to the maximum extent permitted by law, City and its officers, agents, employees and representatives, from and against any and all liability, suits, actions, proceedings, judgments, claims, losses, liens, damages, injuries, costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) which in whole or in part arise out of or are connected with, Developers' performance of this Agreement (including performance by its agents, employees, subcontractors or by anyone Developers directly or indirectly employ). Developers' obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon Developers whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.
8. Insurance. Developers agrees to maintain, at Developers' sole expense, and to cause its agents, suppliers and permitted subcontractors (if any) to maintain, at their sole expense, the following insurance coverage in at least the amounts specified:
 - Workers Compensation: Statutory Limits
 - Employer's Liability: \$1,000,000 per accident and employee
 - Commercial General Liability (including contractual liability): \$1,000,000 per occurrence
 - Product/Completed Ops: \$2,000,000 aggregate
 - Auto Liability: \$1,000,000 combined single limit
 - All other insurance required by state or federal law

All policies (except Workers' Compensation) will name the City of Fort Pierce and its members, officials, officers, agents and employees as Additional Insureds. A Waiver of Subrogation in favor of City and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to City prior to commencement of any services under this Agreement. If a policy contains deductible provisions, Developers will be responsible for payment of the deductible amount for any claim(s) or the pursuit of any claim(s) or asserted claim(s) against City, its agents, employees or representatives.

Verification of Insurance Coverage will be forwarded to:

City of Fort Pierce
P.O. Box 1480
Fort Pierce, FL 34954
Attention: City Manager

9. Public Records. City strictly adheres to all statutes, court decisions and the opinions of the Florida Attorney General with respect to disclosure of public information under Chapter 119, Florida Statutes. In accordance with Chapter 119, Florida Statutes, and at no additional charge to City, Developers will make any information created or exchanged with City pursuant to the Agreement (and not otherwise exempt from disclosure as provided by law) available in a format reasonably requested by City that is accessible to the public.

10. Miscellaneous provisions.

- a. If Developers are a corporation or a limited liability company, Developers warrant, represent, covenant, and agree that they are duly organized, validly existing and in good standing under the laws of the state of their incorporation or organization and are duly authorized and in good standing to conduct business in the State of Florida, that they have all necessary power and have received all necessary approvals to execute and deliver the Agreement, and the individuals executing the Agreement on behalf of Developers have been duly authorized to act for and bind Developers.
- b. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for resolution of any dispute arising hereunder shall be in St. Lucie County, Florida.
- c. This Agreement contains and sets forth all the promises, covenants, agreements, conditions and understandings among the Parties with respect to the subject matter of this Agreement. No subsequent alteration, amendment, change, or addition to this Agreement or its attachments will be binding on the Parties unless in writing and signed by the parties and made a part of this Agreement by direct reference.
- d. The terms of this Agreement shall be binding on the respective successors, representatives, agents, and assigns of the Parties.
- e. This Agreement shall be binding upon and shall inure to the benefit of the legal representatives, successors and assigns of the parties hereto, and shall run with title to the property and be binding upon the successor or assigns of the Developers.
- f. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together shall constitute one and the same instrument.
- g. Each Party has had the opportunity for its legal counsel to review this Agreement and has had equal responsibility for the drafting of this Agreement.
- h. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement.
- i. This Agreement is solely for the benefit of the Parties to this Agreement and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a party hereto. Nothing in this Agreement, expressed or implied, is intended, nor shall be construed, to confer or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective legal representatives, successors and assigns.
- j. No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

11. Effective date. This Agreement shall be effective upon adoption and final signatures of the Parties.

IN WITNESS WHEREOF, the Parties have caused this agreement to be duly executed by their respective authorized representatives on the dates set forth below.

ATTEST:

CITY: CITY OF FORT PIERCE, FLORIDA

Linda W. Cox, City Clerk

By: _____
Linda Hudson, Mayor Commissioner

APPROVED AS TO FORM
AND CORRECTNESS:

Date: _____

By: _____
James M. Messer, Esq., City Attorney

DEVELOPERS:

TA1(IRD), LLC

WITNESS:

By: _____

Sign: _____

Title: _____

Print: _____

TMH, LLC

Sign: _____

By: _____

Print: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____, as _____ of TA1(IRD), LLC, who is [] personally known to me or [] produced _____ as identification.

NOTARY PUBLIC

Sign: _____

Print: _____

State of _____ at Large

My Commission Number: _____

My Commission Expires: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____, as _____ of TMH, LLC, who is [] personally known to me or [] produced _____ as identification.

NOTARY PUBLIC

Sign: _____

Print: _____

State of _____ at Large

My Commission Number: _____

My Commission Expires: _____

EXHIBIT "A"
SURPLUS PROPERTY

EXHIBIT "B"
ENHANCEMENTS

EXHIBIT "C"
DEVELOPMENT PLAN

EXHIBIT "A"

SURPLUS PROPERTY

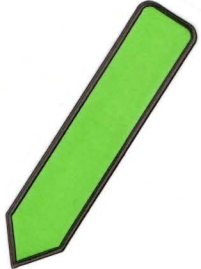
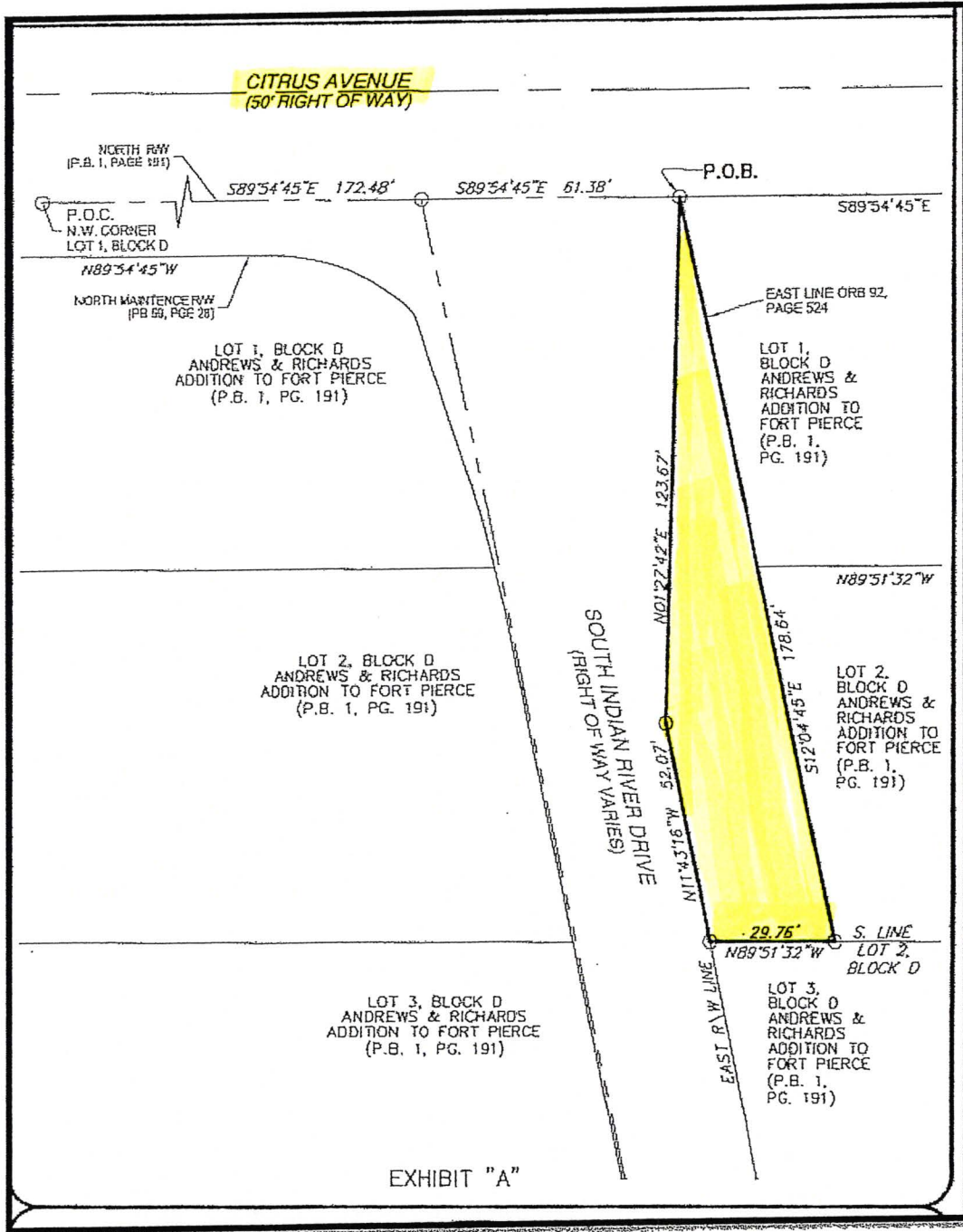


EXHIBIT "A"

SURPLUS PROPERTY

Legal Description:

A PARCEL OF LAND BEING PART OF LOTS 1 AND 2, BLOCK D, ANDREWS AND RICHARDS RE-SUBDIVISION, AS PER THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 191, ST. LUCIE COUNTY, FLORIDA, PUBLIC RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 1, BLOCK D, RUN SOUTH $89^{\circ}54'45''$ EAST (BASIS OF BEARINGS) ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 172.48 FEET; THENCE CONTINUE SOUTH $89^{\circ}54'45''$ EAST, A DISTANCE OF 61.38 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH $12^{\circ}04'45''$ EAST A DISTANCE OF 178.64 FEET TO THE SOUTH LINE OF SAID LOT 2, BLOCK D; THENCE RUN ALONG SAID SOUTH LINE NORTH $89^{\circ}51'32''$ WEST, A DISTANCE OF 29.76 FEET TO THE MONUMENTED EAST RIGHT OF WAY LINE OF INDIAN RIVER DRIVE (A VARIABLE WIDTH RIGHT OF WAY); THENCE RUN NORTH $11^{\circ}43'16''$ WEST ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 52.07 FEET; THENCE LEAVING SAID EAST RIGHT OF WAY LINE RUN NORTH $01^{\circ}27'42''$ EAST, A DISTANCE OF 123.67 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING APPROXIMATELY 3, 350 SQUARE FEET MORE OR LESS.

Sec. 17-1. - Abandonment, narrowing, etc., of streets.

- (a) No street, alley or way shall be closed, abandoned, relinquished or narrowed except by ordinance.
- (b) The person requesting abandonment of any street alley, or right-of-way shall be responsible for the payment of all costs involved in, or incurred by, the process of vacating and abandonment of any street, alley, or right-of-way.

(Ord. No. K-106, § 1, 10-1-01)