

## **RIVERLAND BECKER ROAD CONSTRUCTION AGREEMENT**

**THIS CONSTRUCTION AGREEMENT** (the “**Agreement**”) is made and entered into as of the date that the last party executes this Agreement (“**Effective Date**”), by and between the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation (“**City**”), and **RIVERLAND/KENNEDY II, LLC**, a Florida limited liability company (“**GL**”), as successor to Riverland/Kennedy, LLP and Riverland/Kennedy III, LLC. The City and GL shall each be referred to herein as a “**Party**,” and collectively as the “**Parties**”.

### **R E C I T A L S:**

WHEREAS, the City and GL are parties to that certain Annexation Agreement dated July 19, 2004, as amended by: that certain First Amendment to Annexation Agreement dated May 16, 2005, Second Amendment to Annexation Agreement dated July 11, 2005, Third Amendment to Annexation Agreement dated November 16, 2009, Fourth Amendment to Annexation Agreement dated November 16, 2009, Fifth Amendment to Annexation Agreement dated December 28, 2009, and Sixth Amendment to Annexation Agreement dated April 2, 2010 (collectively, the “**Annexation Agreement**”);

WHEREAS, pursuant to Sections 5(e)(iii) and 5(e)(iv) of the Annexation Agreement, GL, along with the other parties to the Annexation Agreement, is required to pay to the City the estimated cost of construction of a certain two-lane roadway section of Becker Road or, at the City’s election, contract for the construction and/or design of such roadway;

WHEREAS, the Third Amendment to Annexation Agreement provided that the initial two-lanes of the roads shown on the Existing Dedicated Road Network may, in GL’s sole discretion, be constructed on one side of the right-of-way, and Becker Road is part of such Existing Dedicated Road Network;

WHEREAS, the City has created a proposed cross-section for their desired design of Becker Road West, which is attached as **Exhibit “A”** hereto (the “**Becker Road West Cross-Section**”);

WHEREAS, pursuant to Section 5(e)(iv) of the Annexation Agreement, the City has elected to allow GL to design and construct, using the Becker-Road West Cross-Section prepared by the City, the portion of Becker Road through the GL Property (as defined in the Annexation Agreement) from the western edge of the intersection of Becker Road and Community Blvd to the western edge of Roadway N/S B (n/k/a Riverland Boulevard) and Becker Road (the “**Riverland Becker Road Section**”), and GL has agreed to so design, permit and construct the Riverland Becker Road Section, all on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, by entering into this Agreement, the City acknowledges that the demands set forth in that certain letter from the City addressed to Larry Portnoy and Steve Helfman, Esquire, dated November 10, 2021 (the "**Demand Letter**") have been satisfied, subject to GL's performance of its duties and obligations under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

1. Recitals; Exhibits. The foregoing recitals and all exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

2. Surety. Within five (5) business days following the Effective Date, GL agrees to deliver to the City a surety bond in favor of the City in the amount of Sixteen Million Eight Hundred Seventy-Six Thousand Two Hundred Twenty-Nine and 20/100 (\$16,876,229.20) Dollars ("**Security**"), representing the City's estimated cost for the construction of the Riverland Becker Road Section set forth in the Demand Letter. From time to time during construction of the Riverland Becker Road Section, GL shall have the right to reduce the Security based on one half of the percentage completion of the work at the time of the request. In that regard, upon GL's submission to the City of an engineer's certificate signed by the engineer of record ("EOR") certifying the percentage completion, the Security may be reduced by an amount equal to one half of such percentage. By way of example and for illustration purposes only, if the EOR certification reflects that the Riverland Becker Road Section is 20% complete, the initial amount of Security shall be reduced to \$15,188,606.30 (i.e., \$16,876,229.20 multiplied by 90%). The Security shall be released upon Completion of Construction, as defined in Subparagraph 3(c) below.

3. Construction of Riverland Becker Road Section. GL shall facilitate and cause, at GL's sole cost and expense except as provided in paragraph 4 below, the design, permitting and construction of the Riverland Becker Road Section based on the Becker Road West Cross-Section (Exhibit "A" attached hereto), and as provided in this Agreement. GL shall be responsible to prepare and obtain approval of final plats and construction plans (including water and sewer for which GL shall be partially reimbursed as further outlined below) for the Riverland Becker Road Section rights-of-way. GL shall also be responsible for fire hydrants on the Riverland Becker Road Section, and such fire hydrants must meet City and St. Lucie County Fire District requirements. The Parties acknowledge and agree that the Riverland Becker Road Section includes construction of the intersection of Becker Road and Roadway NS B (n/k/a Riverland Boulevard) but does not include the design, permitting or construction of the intersection of Becker Road and Community Boulevard.

(a) Construction Plans and Permit Applications. Within one hundred twenty (120) days following the Effective Date, GL shall furnish to the City and South Florida Water Management District (the "**District**") a 60% complete set of design and construction drawings, plans and specifications ("60% Construction Plans") for the

Riverland Becker Road Section based on the Becker Road West Cross-Section. The City shall review and provide GL comments on the 60% Construction Plans within twenty-one (21) days of receipt. Within fifteen (15) days of receipt of City comments on the 60% Construction Plans, GL shall furnish to the City a 100% complete set of design and construction drawings, plans, and specifications (“100% Construction Plans”). The City shall review and provide GL comments on the 100% Construction Plans within twenty-one (21) days of receipt or provide GL approval. GL agrees to respond to any additional City comments within fifteen (15) days and supply corrected 100% Construction Plans until the City gives final approval. Within seven (7) days of the City’s approval of the 100% Construction Plans, GL shall provide a final subdivision plat for the road right of way for processing of approval by the City Council. GL agrees to respond to comments received from the District based on the same fifteen (15) day response time that GL has to respond to City comments. GL shall provide the City with a copy of the District permit within three (3) days of GL’s receipt of said permit. The City shall issue its engineering and utilities permits for the corrected 100% Construction Plans within seven (7) days of the City’s approval of said plans and receipt of the District permit. Such drawings, plans and specifications, and the construction of the Riverland Becker Road Section, shall be in accordance with all applicable laws, rules, and regulations, and shall follow all FHWA/FDOT design criteria. The 100% Construction Plans shall provide for the roadway drainage, treatment and ultimate positive discharge of stormwater as required by the City and the District.

(b) Permits for Construction. GL shall diligently seek and obtain from the City, and any other applicable governmental authorities, all required permits and approvals as may be required for construction of the Riverland Becker Road Section. The City agrees to cooperate with GL’s efforts to obtain all such permits and approvals necessary to construct the Riverland Becker Road Section in accordance with this Agreement and any other applicable state or local laws, rules, or regulations. City shall cooperate with GL to obtain the necessary street lighting agreement(s) between the City and FPL for any streetlights to be installed. City shall execute said FPL street lighting agreement(s) when they are available to the City and return copies of the executed agreements to GL in a timely manner.

(c) Completion of Construction. GL shall obtain Completion of Construction (as defined below) of the Riverland Becker Road Section no later than fifteen (15) months following GL’s receipt of all required permits and approvals for construction as provided in Subparagraphs 3(a) and 3(b) above. For purposes of this Agreement, “Completion of Construction” requires (i) a written Certificate of Completion issued by the EOR to the City, (ii) a final walk-through and acceptance by the City of the Riverland Becker Road Section in accordance with Section 156.150 of the City Code, (iii) conveyance of the 10’ utility easements pursuant to Subparagraph 3(d) below, and (iv) GL’s posting of a one-year maintenance bond in a principal amount equal to 15% of the actual cost of construction of the Riverland Becker Road Section, pursuant to Section 156.146 of the City Code.

Any delays beyond the direct and immediate control of GL for the installation of FPL street lighting shall not be the basis of any default of this Agreement by GL, a Certificate of Completion shall not be withheld by the EOR based on any such delays, the Completion of Construction shall not be considered delayed on the basis of any such delays, and the opening of the road for traffic shall not be delayed based on any such delays.

(d) Utility Easements. Within one hundred and eighty (180) days of the Effective Date, GL shall convey to the City a 10' utility easement on the south side of the Riverland Becker Road Section, as depicted in Exhibit "A" to this Agreement and shall provide a property information report or other title documentation requested by the City, in a form acceptable to the City Attorney's Office. The Parties agree that said easement will contain a provision that precludes the City and other third parties from accessing the easement before GL's Completion of Construction. Notwithstanding the foregoing, prior to Completion of Construction, the City and its FPL approved contractor(s) may access said easement solely for the purpose of installing FPL conduit in the easement area provided that: (i) all necessary FPL conduit is installed at the same time, and (ii) the City works with GL to ensure installation of FPL conduit does not interfere with GL's development activities. Within three hundred and sixty (360) days of the Effective Date, GL shall also convey to the City a 10' utility easement on the north side of the Riverland Becker Road Section, as depicted in Exhibit "A" to this Agreement and shall provide a property information report or other title documentation requested by the City, in a form acceptable to the City Attorney's Office. The Parties agree that said easement will contain a provision that precludes the City and other third parties from accessing the easement before GL's Completion of Construction.

4. Reimbursement of Water and Sewer Improvements. Following Completion of Construction of the Riverland Becker Road Section, including the water and sewer mains, the City shall reimburse GL for the fees, costs, and expenses (including, without limitation, engineering, surveying and permitting fees and costs) paid by GL relating to the design and installation of the sewer (but not water) improvements installed as part of the construction of the Riverland Becker Road Section.

5. Force Majeure: Weather Days. The deadlines set forth herein are subject to extension by either Party for a Force Majeure Event (as herein defined). As used herein, a "**Force Majeure Event**" shall include governmental moratorium or unavailability of essential supplies or utilities (e.g., power or water) through no fault of the requesting Party, fire (including wildfires), explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, pandemic, hurricane, tropical storm, tornado, or flooding. Any extension of any deadline set forth in this Agreement due to a Force Majeure Event shall be only for delay in performance that actually results from such Force Majeure Event. In the event that either Party claims a delay for a Force Majeure Event, the requesting Party shall make a claim for an extension in writing to the other Party within fifteen (15) business days after the occurrence of a Force Majeure Event for which such claim is being made. The claim shall clearly state the reason, provide a detailed explanation as to why the event is considered to be a Force Majeure Event and provide sufficient documentation to support such claim. If no written objection to such claim for

extension is received from the other Party within fifteen (15) business days from the date of the written extension request, such extension shall be deemed given. If a written objection is made, the Parties shall meet and confer within fifteen (15) business days to address their differences and may not take legal action prior to such conferral taking place.

Additionally, any date or deadline set forth in this Agreement may be delayed for inclement weather conditions, as set forth in the following sentence, based on the commercially reasonable concurrence of the City (“**Weather Days**”). City will grant time extensions, on a day-to-day basis, for delays caused by the effects of rain or inclement weather conditions, related adverse soil conditions or suspensions of operations that prevent GL from constructing the Riverland Becker Road Section. If GL believes a Weather Day has occurred, GL shall submit a request for time extension within ninety (90) days after the occurrence of the Weather Days, which, in the opinion of GL, warrants such an extension with reasons clearly stated and a detailed explanation as to why the event is considered to be a Weather Day and provide sufficient documentation to support such request. If no written objection to such request for extension is received from the City within fifteen (15) business days from the date of the delivery by GL of the request, such extension shall be deemed given. If a written objection is made by the City, the Parties shall meet and confer within fifteen (15) business days to address their differences and may not take legal action prior to such conferral taking place.

6. Satisfaction of Annexation Agreement Obligation. Upon Completion of Construction in accordance with this Agreement, any of GL’s or the City’s obligations which may have existed under Section 5 of the Annexation Agreement, solely with respect to Becker Road, shall be considered performed and satisfied. This Agreement is an additional obligation related to Becker Road, and shall not satisfy, alter or release any other obligations GL or the City has, if any, regarding Becker Road, pursuant to any development orders, permits or other agreements besides the Annexation Agreement. In the event there is any conflict between any terms or provisions in the Annexation Agreement and the terms or provisions of this Agreement, the terms and provisions of this Agreement shall control.

7. Defaults.

a) Defaults Relating to Subsection 3(a), 3(b) & (3)(c) of Agreement:

- i. Default by GL: If GL fails to timely perform any of its obligations pursuant to Subsection 3(a), 3(b) or (3)(c) of this Agreement, the City may send written notice (a “Default Notice”) to GL specifying the nature of the default and the action required to cure the default. If GL fails to cure such default within thirty (30) days following GL’s receipt of the Default Notice or if such default cannot be cured within said thirty (30) day period and fails to timely commence to cure the default within such thirty (30) days and thereafter diligently pursue completion thereof, the City may diligently complete construction of the Riverland Becker Road Section using contractors selected by the City, and to use the Security for payment of all fees, costs and expenses incurred by the City to complete the construction. The City’s

sole and exclusive remedy is to recover the third-party costs and expenses incurred in completing the construction of the Riverland Becker Road Section from the Security. However, in the event the Security is insufficient to cover the costs and expenses incurred by the City, the City shall have the right to seek reimbursement directly from GL for any shortfall not covered by the Security. The City shall have no other rights or remedies against GL in the event of a default relating to Subsection 3(a), 3(b) or 3(c) of this Agreement.

ii. Default by City: If City fails to timely perform any of its obligations pursuant to Subsection 3(a), 3(b) or 3(c) of this Agreement, GL may send a Default Notice to City specifying the nature of the default and the action required to cure the default. If City fails to cure such default within thirty (30) days following City's receipt of the Default Notice or if such default cannot be cured within said thirty (30) day period and fails to timely commence to cure the default within such thirty (30) days and thereafter diligently pursue completion thereof, GL may, as its sole and exclusive remedy, seek specific performance of such obligation. GL shall have no other rights or remedies against the City in the event of a default relating to Subsection 3(a), 3(b) or 3(c) of this Agreement.

b) Other Defaults. For defaults other than those described in Subsection 7(a), if either Party fails to timely perform any of its obligations pursuant to this Agreement, the non-defaulting party may send a Default Notice to the defaulting party specifying the nature of the default and the action required to cure the default. If the defaulting party fails to cure such default within thirty (30) days following receipt of the Default Notice or if such default cannot be cured within said thirty (30) day period and fails to timely commence to cure the default within such thirty (30) days and thereafter diligently pursue completion thereof, the non-defaulting party may, as its sole and exclusive remedy, seek specific performance of such obligation. GL and the City shall have no other rights or remedies against the defaulting party in the event of a default pursuant to this paragraph 7(b).

8. Intersection Agreement. The City shall enter into an agreement with Mattamy Palm Beach, LLC, by March 20, 2022, for the construction of the Community and Becker Road Intersection.

9. Notices. All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the Party giving such notice) hand delivered by messenger or courier service, by overnight courier service, by regular United States Mail with postage prepaid, or by certified mail, return receipt requested (Airmail if international), and shall be directed to the following persons and places designated by the parties:

**The City:**

PORT ST. LUCIE

**GL:**

RIVERLAND/KENNEDY II LLC

121 S.W. Port St. Lucie Boulevard  
Port St. Lucie, FL 34984  
Attn: Russ Blackburn, City Manager

1600 Sawgrass Corp. Pkwy, Suite 400  
Sunrise, FL 33323  
Attn: Steven M. Helfman, Esq.

10. Miscellaneous.

(a) Amendment. Any amendments to this Agreement must be in writing and executed by both Parties with the same formalities as this Agreement.

(b) Invalid Provisions. In case any term or provision of this Agreement is held illegal, unenforceable, or inoperative as a matter of law, the remaining terms and provisions will not be affected thereby but will be valid and remain in full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

(c) Headings. The headings contained in this Agreement are for convenience only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

(d) Time Computation: In computing any period of time under this Agreement, the days are calculated as calendar days, unless expressly indicated as business days. Additionally, the calculation begins with the day following the act and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the City, in which case the period of time includes the next business day.

(e) Waivers. Any waiver issued by a Party of any provision of this Agreement shall only be effective if issued in writing by such Party, and shall be specific, only to the particular matter concerned, and shall not apply to any other matters. Any Party's failure to enforce strict performance of any covenant, term, condition, promise, agreement or undertaking set forth in this Agreement shall not be construed as a future waiver or relinquishment of any other covenant, term, condition, promise, agreement or undertaking set forth in this Agreement, or waiver or relinquishment of any other covenant, term, condition, promise, agreement or undertaking at any time in the future.

(f) Governing Law. This Agreement shall be construed and interpreted, and the rights of the Parties determined, in accordance with Florida law without regard to conflicts of law provisions. The Parties agree that proper venue for any lawsuit concerning this Agreement shall be St. Lucie County, Florida. The Parties agree to waive all defenses to any suit filed in Florida based upon improper venue or forum non-convenience. 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. This clause shall survive the expiration or termination of this Agreement.

(g) Non-waiver of Sovereign Immunity. Nothing in this Agreement shall be deemed to affect the rights, privileges and sovereign immunities of the City as set forth in Section 768.28, Florida Statutes, or any other provision of law.

(h) Entire Agreement. This Agreement contains the entire agreement between the Parties hereto as it pertains to the subject matter contained herein and shall supersede and take precedence over any and all prior and contemporaneous agreements and understandings between the Parties hereto, unless otherwise stated. No additions, alterations, or variation of the terms of this Agreement shall be valid, except as provided in Subparagraph 10(a) above. Notwithstanding anything to the contrary herein, this Agreement only relates to Section 5 of the Annexation Agreement with respect to Becker Road and does not relate to any other issues between the Parties hereto, whether arising under the Annexation Agreement or otherwise.

(i) Authority to Sign. Each individual signing this Agreement directly and expressly warrants that he/she has been given and received and accepted authority to sign and execute the documents on behalf of the Party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such Party with respect to the matters concerned herein and stated herein.

(j) No Third-Party Beneficiary. None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party. This Agreement has been entered into for the sole benefit and protection of the City and GL and is not intended to confer upon any other person or entity any rights or remedies hereunder. This Agreement shall not provide any third-party with any right, remedy, claim, liability, reimbursement, or other cause of action.

*[Signature page immediately follows.]*



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on behalf of themselves and/or their respective entities, their successors and assigns, on the Effective Date.

**AGREED TO BY GL this \_\_\_\_\_ day of \_\_\_\_\_, 2022:**

RIVERLAND/KENNEDY II, LLC, a Florida limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Witnesses: (Two Required)**

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

STATE OF FLORIDA        )  
  ) ss  
COUNTY OF BROWARD )

The foregoing Agreement was acknowledged before me by means of  physical presence or  online notarization on \_\_\_\_\_, 2022, by \_\_\_\_\_, as Vice President of Riverland/Kennedy II, LLC, a Florida limited liability company, on behalf of said company, who is  personal known to me or  has produced \_\_\_\_\_ as identification, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that the foregoing instrument was executed by \_\_\_\_\_ for the purposes therein contained.

WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**[SIGNATURES CONTINUE ON NEXT PAGE]**

**AGREED TO BY CITY this \_\_\_\_\_ day of \_\_\_\_\_, 2022:**

By: \_\_\_\_\_

Print Name: Russ Blackburn

Title: City Manager

ATTEST:

\_\_\_\_\_  
Sally Walsh, City Clerk

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
James Stokes, City Attorney

STATE OF FLORIDA     )  
  ) ss  
COUNTY OF ST. LUCIE    )

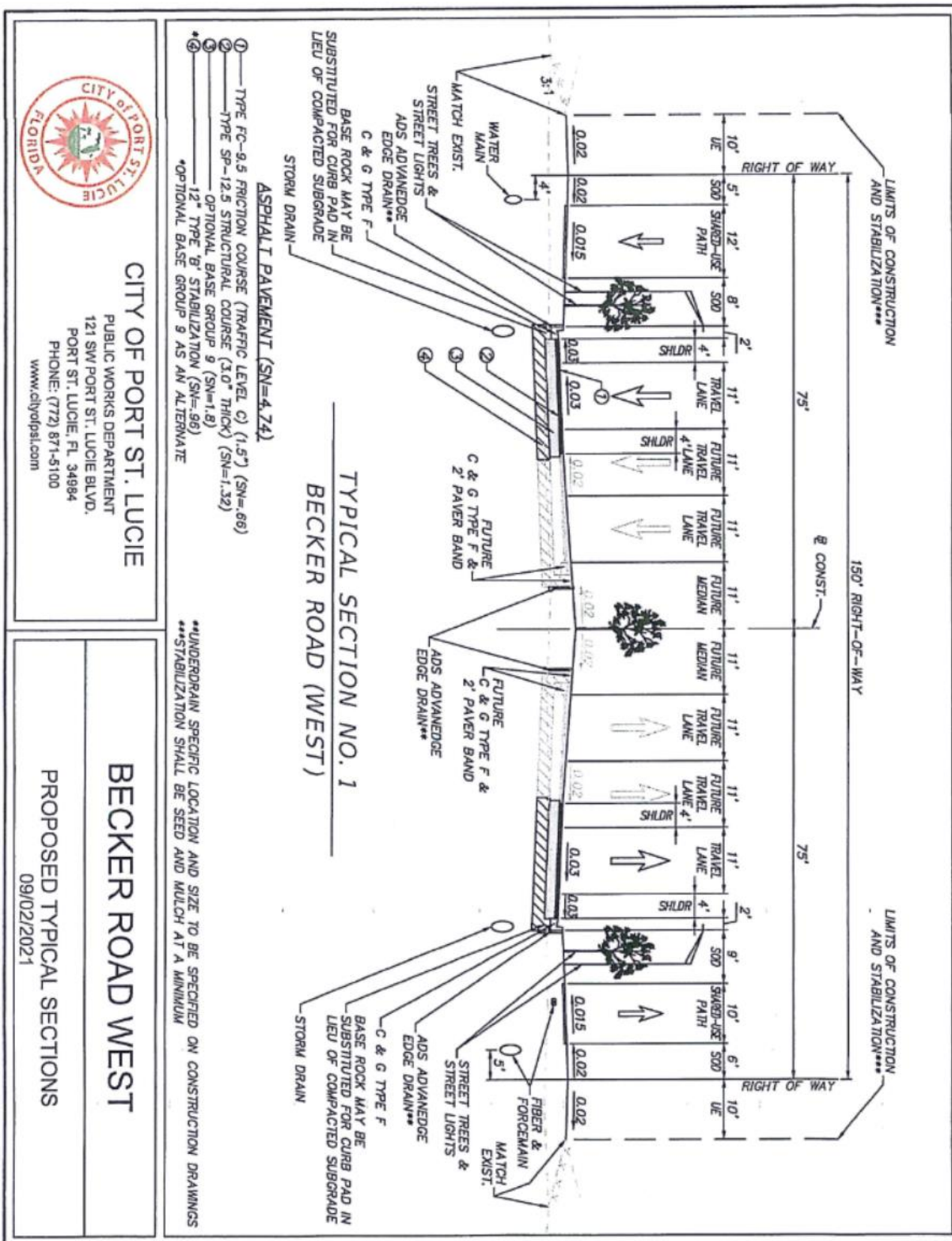
The foregoing Agreement was acknowledged before me by means of  physical presence or  online notarization on \_\_\_\_\_, 2022, by Russ Blackburn, as City Manager, for the City of Port St. Lucie, who is  personal known to me or  has produced \_\_\_\_\_ as identification, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that the foregoing instrument was executed by Russ Blackburn for the purposes therein contained.

WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

# EXHIBIT "A"

## Becker Road West Cross-Section



**CITY OF PORT ST. LUCIE**

PUBLIC WORKS DEPARTMENT  
 121 SW PORT ST. LUCIE BLVD.  
 PORT ST. LUCIE, FL 34984  
 PHONE: (772) 871-5100  
 www.cityofpsl.com

### BECKER ROAD WEST

### PROPOSED TYPICAL SECTIONS

09/02/2021