

Prepared by and return to:

EARLY SITE WORK AGREEMENT (Earthwork Construction)

Attachments:

Exhibit “A” – Regional Park Property

Exhibit “B” – Conservation Tracts

Exhibit “C” – 14 Acre Parcel

Exhibit “D” – Earthwork Construction

THIS EARLY SITE WORK AGREEMENT (“Agreement”) is made and entered into on this ____ day of _____, 2023 (“Effective Date”) by and between MATTAMY PALM BEACH, LLC, a Delaware limited liability company (“MATTAMY”), the CITY OF PORT ST. LUCIE, a Florida Municipal Corporation (“CITY”), and TRADITION COMMUNITY DEVELOPMENT DISTRICT NO. 1, a community development district organized and existing under Chapter 190, Florida Statutes (TRADITION CDD NO. 1). MATTAMY, CITY and TRADITION CDD NO. 1 are each sometimes referred to as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the CITY owns, operates, and maintains parks and recreational facilities, within the City of Port St. Lucie; and

WHEREAS, the property described on **Exhibit “A”** is intended to be developed as a parks and recreational site (the “Regional Park Property”); and

WHEREAS, the CITY, TRADITION CDD NO. 1 and MATTAMY own or hold an interest in the Regional Park Property; and

WHEREAS, the TRADITION CDD NO. 1 obtained certain interests in portions of property intended to be developed as part of the Regional Park Property, specifically Conservation Tracts 76 and 80, through plat dedications, that property is described on **Exhibit “B”** attached hereto (collectively the “Conservation Tracts”); and

WHEREAS, Conservation Tract 76 is intended to be developed and conveyed to the City and Conservation Tract 80 is intended to be preserved and retained by the TRADITION CDD NO.1; and

WHEREAS, the CITY holds an interest by plat dedication in approximately 14.31 acres of the Regional Park Property (the “14 Acre Parcel”), and more specifically described on **Exhibit “C”**; and

WHEREAS, in advance of undertaking the park improvements, and entering into an agreement for same, MATTAMY requests the ability to perform Phase 1a of the park project, the early site work at the Regional Park Property contemplated by the Tradition Regional Park Phase 1 Site Plan (P21-116) (“Site Plan”), specifically to include environmental services, including permitting and mitigation (including Gopher Tortoise relocation), general conditions, including earthwork such as clearing and mass grading, erosion control and associated work, as more particularly set forth on **Exhibit “D”** attached to this Agreement and made a part hereof (collectively the “Earthwork Construction”); and

WHEREAS, the CITY and the TRADITION CDD NO. 1 desire to allow MATTAMY to perform Earthwork Construction on the Regional Park Property; and

WHEREAS, the Regional Park is described in the CITY’s Park Program; and

WHEREAS, MATTAMY, the CITY, and the TRADITION CDD NO. 1 desire to establish their respective rights and obligations regarding MATTAMY’s Earthwork Construction on the Regional Park Property.

NOW THEREFORE, in consideration of ten dollars (\$10.00), the foregoing premises, the undertakings and mutual agreements herein contained and assumed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Recitals: The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Mitigation of Conservation Tract 76: Prior to carrying out any work or construction of improvements reflected on the approved Site Plan or on **Exhibit “D”** hereto, MATTAMY shall provide to the CITY any and all required permits, approvals or consents to allow Conservation Tract 76 to be developable land and perform all work necessary to bring Conservation Tract 76 to grade for development (“Conservation Tract Mitigation”). MATTAMY shall complete said work no later than January 1, 2024. The CITY shall deem Conservation Tract Mitigation complete upon issuance of a permit(s) by the relevant governmental authority authorizing development of Conservation Tract 76 and removing any conservation requirement.

3. Earthwork Construction:

A. MATTAMY agrees to perform the Earthwork Construction in accordance with the Mattamy Design Plans (as defined below). MATTAMY shall commence the Earthwork Construction within forty-five (45) days of the Effective Date or upon completion of Conservation Tract Mitigation, whichever occurs last (“Earthwork Construction Commencement”). MATTAMY shall complete Earthwork Construction within one hundred twenty (120) days of the Earthwork Construction Commencement.

B. MATTAMY may not utilize any contingency funds set forth in Section 3.C. below

without written consent by the CITY, specifically consent of the City Manager or his/her designee.

C. CITY agrees to reimburse MATTAMY for the actual cost of the Earthwork Construction of not more than \$2,002,673.55. CITY agrees to reimburse MATTAMY not more than an additional \$159,271.00 from contingency funds, subject to Section 3.B. above. Reimbursement will be made within forty-five (45) days of: (i) Final Completion, as defined below; or (ii) MATTAMY providing the CITY with documentation (sufficient to the CITY in its sole discretion) showing the actual cost of the Earthwork Construction that MATTAMY performed; or (iii) conveyance of Conservation Tract 76 and the 14 Acre Parcel pursuant to the terms outlined in Section 8 of this Agreement, whichever event occurs last. Additionally, MATTAMY acknowledges and agrees that the Earthwork Construction identified on **Exhibit “D”** is a complete and accurate depiction of all reimbursable expenses relating to the Regional Park Property by MATTAMY and that MATTAMY will not receive reimbursement for expenses associated with the Regional Park Property not depicted on **Exhibit “D”** unless additional agreements are entered into with the CITY. Additionally, MATTAMY acknowledges and agrees it will not seek reimbursement for the existing lake on the Regional Park Property that was constructed to accommodate drainage for Tradition Parkway.

D. MATTAMY shall be responsible for obtaining all necessary permits to complete the Earthwork Construction. CITY agrees to expedite the review and issuance of any City permits for MATTAMY for the Earthwork Construction, which CITY shall use all reasonable efforts to have such reviews completed within thirty (30) days of receipt of an application for such permits.

4. Conditions to Commencement of Earthwork Construction. Prior to commencement of construction of the Earthwork Construction, MATTAMY shall provide the CITY with: (a) a bond in a form and content acceptable to the CITY, in an amount equal to 120% of the total estimated cost of the Earthwork Construction, as reflected on **Exhibit “D”** (“**Bond**”); (b) evidence that all necessary permits have been obtained; (c) a copy of the construction contracts for the Earthwork Construction; (d) evidence that Conservation Tract Mitigation was completed per Section 2; and (e) evidence of a certificates of insurance reasonably satisfactory to the CITY and evidencing liability insurance as set forth in Section 9 below.

5. Compliance with Applicable Laws, Codes and Regulations: MATTAMY and the TRADITION CDD NO. 1 shall abide by and follow any and all rules and requirements of the regulatory agencies that have jurisdiction over the subject matter of this Agreement as well as all applicable federal and state laws, regulations, and CITY ordinances, as amended from time to time.

6. Construction and Design Plans: MATTAMY shall furnish to CITY a complete set of design and construction drawings, plans, specifications, and other necessary engineering data for the proposed Earthwork Construction (“Mattamy Design Plans”) within fifteen (15) days of the Effective Date. After commencement of the Earthwork Construction if there is either: (i) a cessation of construction activity where there have been no documented inspections by CITY for a period of twelve (12) months; or (ii) an expiration of the associated permit(s), whichever occurs first, then CITY reserves the right to require the resubmittal of the Mattamy Design Plans and further payment of applicable review fees upon MATTAMY’s resubmission of said documents for approval. Approval by the CITY of the Mattamy Design Plans for the Earthwork Construction

shall not act as a waiver of MATTAMY's responsibility to perform the Earthwork Construction in accordance with all applicable state, county, federal or municipal laws, rules and regulations and such approval by the CITY shall not relieve MATTAMY of such obligations or impact the CITY's right to be indemnified for MATTAMY's or MATTAMY's contractor's negligence in performing those duties.

7. Completion of Earthwork Construction: MATTAMY shall provide written notice to the CITY of its completion of construction of Earthwork Construction and within seven (7) business days after delivery of such notice, the CITY shall make a final inspection to confirm that the Earthwork Construction has been completed in substantial compliance with the Mattamy Design Plans and any applicable building codes and regulations. Upon receipt of notice from the City that the Earthwork Construction has passed the forgoing inspection, and at a mutually agreeable time thereafter, MATTAMY shall deliver to the CITY a bill of sale (if applicable) and a signed assignment of warranties, in a form mutually acceptable to the Parties, assigning to the CITY MATTAMY's rights and interest in and to all third party warranties pertaining to the Earthwork Construction, to the extent assignable (the "Mattamy Assignment of Warranties"). Upon the foregoing occurrences, the CITY shall deliver to MATTAMY written acceptance of the Earthwork Construction ("Mattamy Certificate of Completion"). Upon issuance of the Mattamy Certificate of Completion, the CITY shall be solely responsible for all ongoing maintenance, repair, operation and replacement of the Earthwork Construction and MATTAMY shall have no responsibility or obligation related to the same, absent additional agreements being entered into.

For purposes of this Agreement, the "Final Completion" of construction of the Earthwork Construction shall not be deemed to have occurred until such time as the CITY has issued the Mattamy Certificate of Completion (as defined above).

8. Conveyance of Conservation Tract 76 and 14 Acre Parcel: Prior to MATTAMY seeking reimbursement under this Agreement, and after completion of Conservation Tract Mitigation, the following actions shall take place:

A. TRADITION CDD NO. 1 shall convey or cause the conveyance of Conservation Tract 76 to the CITY via deed or such other form of conveyance mutually acceptable to TRADITION CDD NO. 1 and the CITY. Prior to conveyance of Conservation Tract 76 the following items must be provided to the CITY: (i) a title insurance policy issued by a Florida licensed title insurer showing ownership and any matters appearing in the Public Records of St. Lucie County, Florida, encumbering Conservation Tract 76; (ii) a title opinion confirming there is nothing impacting title that would prohibit, interfere with or limit the usability of Conservation Tract 76 by the public for park and recreation purposes; (iii) a survey certified to the City; and (iv) all soil studies for the site and other documentation in the TRADITION CDD NO 1's possession or custody relating to the characteristics of the land being conveyed. Additionally, TRADITION CDD NO. 1 shall pay all traditional closing costs, including recording fees, documentary stamps, taxes or assessments outstanding on Conservation Tract 76 at the time of the conveyance as well as for the owner's title insurance policy for Conservation Tract 76.

B. MATTAMY shall convey or cause the conveyance of the 14 Acre Parcel to the CITY free and clear of all liens and encumbrances that would prevent, interfere with or limit the

use of the Park Site by the public for park and recreational purposes. Prior to conveyance of the 14 Acre Parcel to the CITY the following items must be provided to the CITY: (i) a title insurance policy issued by a Florida licensed title insurer showing ownership and any matters appearing in the Public Records of St. Lucie County, Florida, encumbering the 14 Acre Parcel; (ii) a title opinion confirming there is nothing impacting title that would prohibit, interfere with or limit the usability of the 14 Acre Parcel by the public for park and recreation purposes; (iii) a survey certified to the City; and (iv) all soil studies for the site, the Army Corps permits and other documentation in the MATTAMY's possession or custody relating to the characteristics of the land being conveyed. Additionally, MATTAMY shall pay all traditional closing costs, including recording fees, documentary stamps, taxes or assessments outstanding on the 14 Acre Parcel at the time of the conveyance as well as for the owner's title insurance policy for the 14 Acre Parcel.

C. Upon the conveyance of the Conservation Tract 76 to the CITY, the CITY, and MATTAMY and TRADITION CDD NO.1, if and as may be required, shall execute an agreement for plat amendment to remove the conservation designation from Conservation Tract 76 on the Tradition Regional Park Plat recorded in Book 100, Page 20 of the Public Records of St. Lucie County ("Regional Park Plat") and present it to the City Council for review and for approval.

9. Insurance: Prior to the commencement of any work contemplated by this Agreement, MATTAMY and the TRADITION CDD NO. 1 (as applicable) must provide the CITY a certificate of insurance evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. MATTAMY is responsible for ensuring that all contractors or subcontractors performing work, on MATTAMY's behalf, relating to this Agreement have policies of insurance reflecting the coverage set forth below, without the language when required by written contract:

A. Workers' Compensation Insurance & Employer's Liability: MATTAMY shall maintain Workers' Compensation Insurance & Employers' Liability in accordance with Chapter 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis.

B. Commercial General Liability Insurance: MATTAMY and the TRADITION CDD NO. 1 shall maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Medical expense	\$10,000 any 1 person

C. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance and must include coverage for on-going and Completed Operations (should be ISO CG2037 & CG2010) under the General Liability policy. Products & Completed Operations

coverage to be provided for a minimum of five (5) years from the date of completion of the work performed pursuant to this Agreement. Coverage is to be written on an occurrence form basis. Coverage shall apply on a primary and non-contributory basis. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the CITY. Coverage for the hazards of explosion, collapse, and underground property damage (XCU) must also be included when applicable to the work performed. No exclusion for bodily injury/property damage arising out of heat, smoke, fumes, or hostile fire shall apply. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests' provision as provided under the standard ISO form separation of insurers clause.

D. Certificate of Insurance. Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by this Agreement has been endorsed to include the City of Port St. Lucie, a Florida Municipal Corporation, its officers, agents, and employees as Additional Insured added to its Commercial General Liability policy. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a Florida Municipal Corporation, its officers, employees, and agents shall be included as additional insured and shall include The Early Site Work Agreement (Earthwork Construction).**" The Policies shall be specifically endorsed to provide thirty (30) day written notice to the CITY prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the CITY is amended during the term of this Agreement to exceed the above limits, MATTAMY shall be required, upon receipt of thirty (30) days written notice by the CITY, to provide coverage at least equal to the amended statutory limit of liability of the CITY. In the event that MATTAMY is unable to obtain such coverage, MATTAMY shall have the right to terminate this Agreement in writing to the CITY. Copies of the Additional Insured endorsements including Completed Operations coverage shall be attached to the Certificate of Insurance.

E. Business Automobile Liability Insurance: MATTAMY shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event MATTAMY does not own any automobiles, the Business Auto Liability requirement shall be amended allowing MATTAMY to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary non-contributory basis.

F. Waiver of Subrogation: MATTAMY shall agree by entering into this Agreement to a Waiver of Subrogation for each policy MATTAMY is required to maintain under this Agreement. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should MATTAMY enter into such a Contract on a pre-loss basis.

G. Deductibles: All deductible amounts for policies MATTAMY is required to maintain under this Agreement shall be paid for and be the responsibility of MATTAMY for any and all claims under this Agreement.

It shall be the responsibility of MATTAMY to ensure that all independent contractors and/subcontractors working by, through, for or under MATTAMY on Earthwork Construction project comply with the same insurance requirements as listed herein, including Products & Completed Operations coverage for a minimum of five (5) years from the date of completion of the improvements built pursuant to this Agreement. It will be the responsibility of MATTAMY to obtain Certificates of Insurance from all contractors and subcontractors working by, through, for or under MATTAMY Earthwork Construction project listing the CITY as an Additional Insured, without the language when required by written contract. If MATTAMY, any independent contractor, or subcontractor maintain higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by MATTAMY/independent contractor/subcontractor.

All insurance carriers must have an AM Best rating of at least A:VII or better.

Nothing in this Agreement shall be construed as a waiver of sovereign immunity by CITY whether by contract or under any law or regulation. Failure of MATTAMY to promptly provide the defense or indemnification required herein is a material breach of this Agreement which can result in immediate termination notwithstanding any other provision herein. CITY's liability in all instances shall be limited to the monetary limits set forth in s. 768.28, Florida Statutes.

10. Indemnification: MATTAMY shall hold harmless and indemnify CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities, or expenditures of any kind, including reasonable attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional or negligent act or omission of MATTAMY, its employees, agents, servants, or officers, resulting from, or related in any way to this Agreement, including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall be deemed to affect the rights, privileges and sovereign immunities of CITY as set forth in Section 768.28, Florida Statutes, or any other provision of law.

The TRADITION CDD NO. 1 agrees it shall, subject to the limitations contained in Section 768.28, Florida Statutes, hold harmless and indemnify CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities, or expenditures of any kind, including reasonable attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional or negligent act or omission of TRADITION CDD NO. 1, its employees, agents, servants, or officers, resulting from, or related in any way to this Agreement, including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall be deemed to affect the rights, privileges and sovereign immunities of CITY as set forth in Section 768.28, Florida Statutes, or any other provision of law.

11. TRADITION CDD NO. 1 Cooperation. TRADITION CDD NO. 1 agrees to take all actions necessary to facilitate MATTAMY's completion of its obligations described herein, including but not limited to execution of all necessary documents relating to obtaining governmental approvals, construction of improvements, and conveyance of Conservation Tract 76.

12. Qualified Contractor: MATTAMY shall each cause the work under this Agreement to be supervised and directed by a contractor licensed in the State of Florida, applying such skills and expertise as is necessary to perform the work in accordance with the applicable approved plans.

13. Repair and Damage of Property: MATTAMY shall repair any damage caused to the CITY or TRADITION CDD NO. 1 property, arising from MATTAMY's use of CITY or TRADITION CDD NO. 1 property necessary to complete the Earthwork Construction.

14. Default:

A. With respect to any event of default and/or breach under this Agreement ("Event of Default"), neither Party shall be deemed in default and/or breach unless:

i. the Party alleging such default and/or breach shall have provided written notice of the alleged default and/or breach to the other Party;

ii. the alleged defaulting and/or breaching Party shall have failed within a period of thirty (30) days after receipt of such notice to commence such action as is reasonably necessary to cure said default and/or breach and thereafter diligently pursue to cure such default within a reasonable time; and

iii. the alleging Party is in compliance with the provisions of this Agreement.

B. Subject to the right to cure set forth above, in the event of a default and/or breach by:

i. MATTAMY. If MATTAMY defaults/breaches by failing to comply with any of its obligations under this Agreement the CITY may pursue the following (or both options): (a) call the Bond; (b) pursue all remedies in equity or law. The TRADITION CDD NO. 1 may pursue all remedies in equity or law against MATTAMY.

ii. TRADITION CDD NO. 1. If the TRADITION CDD NO. 1 defaults/breaches by failing to comply with any of its obligations under this Agreement the CITY and MATTAMY may pursue all remedies in equity or law against the TRADITION CDD NO. 1.

iii. CITY. If the CITY defaults/breaches under this Agreement, MATTAMY and the TRADITION CDD NO. 1's sole and exclusive remedy is to seek specific performance for such obligation.

15. Force Majeure; Weather Days: The deadlines set forth herein, are subject to extensions by any 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 any 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 given as to why the event is 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”). The 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 MATTAMY from constructing their applicable Earthwork Construction. If MATTAMY believes a Weather Day has occurred, MATTAMY may submit a request for time extension within fifteen (15) days after the occurrence of the Weather Days, which, in the opinion of MATTAMY warrants such an extension with reasons clearly stated and a detailed explanation given with sufficient documentation as to why the event is a Weather Day. If no written objection to such request for extension is given by the CITY within fifteen (15) business days from the date of the delivery by MATTAMY 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.

16. Notices: All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person (including by any over-night delivery service) or sent by certified mail, return receipt requested, and addressed as follows or to such other Party or address as may be designated by one Party to the other.

If to CITY:

City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie Florida 34984
Attention: City Manager

With copy to:

City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie Florida 34984
Attention: City Attorney

If to MATTAMY:

Mattamy Palm Beach, LLC
Attention: Dan Grosswald
1500 Gateway Blvd, Ste 212
Boynton Beach, Florida 33426

With copy to:

Fox McCluskey Bush Robison, PLLC
Attention: Tyson Waters, Esq.
3461 SE Willoughby Boulevard
Stuart, Florida 34994

and to:

Mattamy Palm Beach, LLC
Attention: Nicole Marginian Swartz, Esq.
4901 Vineland Road, Suite 450
Orlando, Florida 32811

If to TRADITION CDD NO. 1:

District Manager
10807 S.W. Tradition Square
Port St. Lucie, Florida 34987

Attorney for District No. 1
10807 S.W. Tradition Square
Port St. Lucie, Florida 34987

17. Indulgence Not Waiver: The indulgence of any Party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time of the breach or failure occurs, or at any time throughout the term of this Agreement.

18. Entire Agreement; Amendment: This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements between the Parties. This Agreement may be amended only by written document executed by all Parties.

19. Interpretation; Venue: This Agreement shall be interpreted as a whole unit, and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for any Party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, ALL PARTIES HEREBY WAIVE THEIR RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT. This clause shall survive the expiration or termination of this Agreement.

20. Time of the Essence: Time is of the essence with regard to this Agreement.

21. Counterparts: This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and

the same Agreement.

22. Sovereign Immunity: Nothing in this Agreement shall be considered to increase or waive any limits of liability or waive any immunity afforded to the CITY by Florida Statutes, case law, or any other source of law.

23. Assignability: Except as otherwise permitted elsewhere in this Agreement, the rights and obligations of MATTAMY or the TRADITION CDD NO. 1 under this Agreement may not be assigned in whole or in part without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned.

24. Invalid Provisions: In the event 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 to fullest extent 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.

25. 713 Notice: Under section 713.10, Florida Statutes, the interest of CITY in the property or the improvements therein, shall not be subject to liens for any improvements made by or on behalf of MATTAMY and it is specifically provided that neither MATTAMY nor any one claiming by, through or under MATTAMY, including, without limitation, contractors, subcontractors, materialmen, mechanics and/or laborers, shall have any right to file or place any mechanics' or materialmen's liens of any kind whatsoever upon the property or the improvements thereon; and any such liens are hereby specifically prohibited. All parties with whom MATTAMY may deal are put on notice that MATTAMY has no power to subject CITY's interest to any mechanics' or materialmen's lien of any kind or character, and all such persons so dealing with MATTAMY must look solely to the MATTAMY and not to CITY's said interest or assets. MATTAMY shall provide written notice to each contractor, subcontractor, materialman, mechanic, and laborer performing work on the property of the foregoing.

26. Authority to Sign: Each individual signing this Agreement directly and expressly warrants that such individual has been given and received and accepted authority to sign and execute the documents on behalf of the Party for whom it is indicated such individual 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.

27. Further Assurances: In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by all Parties, all Parties agree to execute and deliver, but without any obligation to incur any additional liability, responsibility, charge or expense, such additional documentation as may be reasonably necessary to consummate the transactions contemplated hereby.

28. Waiver of Consequential Damages: Notwithstanding anything contained in this Agreement to the contrary, each Party hereby waives the right to pursue any other Party, and such other Party

shall not be liable, for any special, indirect, consequential, incidental, or punitive damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement.

29. Public Records: The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. MATTAMY and TRADITION CDD NO. 1 shall comply with Florida's Public Records Law. MATTAMY'S and TRADITION CDD NO. 1'S RESPONSIBILITIES FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes:

MATTAMY and TRADITION CDD NO. 1 agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the CITY in order to perform under this Agreement;

1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.
2. During the term of the Agreement, MATTAMY and TRADITION CDD NO. 1 shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement. The form of all records and reports relating to matters arising from and relating to this Agreement shall be subject to the review of the CITY, and upon CITY's reasonable written request such forms shall be modified as necessary to comply with applicable law.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the CITY. MATTAMY's and TRADITION CDD NO. 1's records under this Agreement include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during this Agreement.
4. MATTAMY and TRADITION CDD NO. 1 agree to make available to the CITY, during normal business hours, all books of account, reports and records relating to this Agreement.
5. A contractor who fails to provide the public records to the City within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

Upon request from the CITY's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if MATTAMY and TRADITION

CDD NO. 1 do not transfer the records to the CITY;

Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of MATTAMY and TRADITION CDD NO. 1, or keep and maintain public records required by the CITY to perform the service. If MATTAMY and TRADITION CDD NO. 1 transfer all public records to the CITY upon completion of the Agreement, MATTAMY and TRADITION CDD NO. 1 shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If MATTAMY and TRADITION CDD NO. 1 keep and maintain public records upon completion of the Agreement, MATTAMY and TRADITION CDD NO. 1 shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

IF MATTAMY AND TRADITION CDD NO. 1 HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MATTAMY AND TRADITION CDD NO. 1 DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871 5157
pr@cityofpsl.com**

30. E-Verify. In accordance with section 448.095, Florida Statutes, MATTAMY and TRADITION CDD NO. 1 agree to comply with the following:

- A. MATTAMY and TRADITION CDD NO. 1 must register with and use the E-Verify system to verify the work authorization status of all new employees of MATTAMY and TRADITION CDD NO. 1. MATTAMY and TRADITION CDD NO. 1 must provide the CITY with sufficient proof of compliance with this provision before beginning work under this Agreement.
- B. If MATTAMY and TRADITION CDD NO. 1 enters into a contract with a subcontractor for work provided under this Agreement, MATTAMY and TRADITION CDD NO. 1 any such contract must require each and every subcontractor to provide the them with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. MATTAMY and TRADITION CDD NO. 1 shall maintain a copy of each and every such affidavit(s) for the duration of the Agreement and any renewals thereafter.
- C. The CITY shall terminate this Agreement if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
- D. MATTAMY and TRADITION CDD NO. 1 shall immediately terminate any contract with any subcontractor performing work under this Agreement if they have, or develop, a good

faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If CITY has or develops a good faith belief that any subcontractor of MATTAMY and/or TRADITION CDD NO. 1 providing work under this Agreement knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the CITY shall promptly notify MATTAMY and/or TRADITION CDD NO. 1 and order MATTAMY and/or TRADITION CDD NO. 1 to immediately terminate the contract with the subcontractor.

- E. The CITY shall terminate this Agreement for violation of any provision in this section. If the Agreement is terminated under this section, it is not a breach of contract and may not be considered as such. If the CITY terminates this Agreement under this section, the MATTAMY and/or TRADITION CDD NO. 1 may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. A contractor is liable for any additional costs incurred by the CITY as a result of the termination of a contract.
- F. The CITY, MATTAMY, TRADITION CDD NO. 1, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c), Florida Statutes, no later than twenty (20) calendar days after the date on which the Contract was terminated. The Parties agree that such a cause of action must be filed in accordance with the Venue provision, as otherwise provided herein.

[Signatures and acknowledgments appear on the following page(s)]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the day and year first above written.

CITY:

CITY OF PORT ST. LUCIE, FLORIDA, a Florida municipal corporation

Attest:

Sally Walsh, City Clerk
(Seal)

By: _____
Shannon Martin, Mayor

DATE:

Witnesses:

Print Name: _____

Print Name: _____

MATTAMY:

Mattamy Palm Beach, LLC, a Delaware limited liability company

By: _____

Print Name: _____

Its: Authorized Signatory

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this _____ day of _____, 2023, by _____, as _____ of Mattamy Palm Beach, LLC, a Delaware limited liability company, on behalf of the company.

[Notary Seal]

Notary Public-State of Florida
Print Name:
My commission expires:

* * *

**TRADITION COMMUNITY
DEVELOPMENT DISTRICT NO. 1, a
community development district**

By: _____
Print Name: _____
Title: _____

WITNESSES:

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence or []
online notarization, this _____ day of _____, 2023, by
_____, as _____ of _____, a .

[Notary Seal]

Notary Public-State of Florida
Print Name:
My commission expires:

* * *

Exhibit "A"
Regional Park Property

TRACT A, CONSERVATION TRACT 76 and CONSERVATION TRACT 80 OF TRADITION REGIONAL PARK ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 100, PAGE 20 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

Exhibit "B"
Tradition CDD No. 1 Property
(Conservation Tracts)

CONSERVATION TRACT 76 and CONSERVATION TRACT 80 OF TRADITION REGIONAL PARK ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 100, PAGE 20 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

**Exhibit “C”
14 Acre Parcel**

Approximately 14.31 acres, exact legal description to be determined prior to conveyance to the CITY.

**Exhibit “D”
Earthwork Construction**