



Item No. 11d

AGENDA ITEM MEMORADUM

Town Manager's Office

Department

Bud Bentley

Assistant Town Manager *BS*

COMMISSION MEETING DATE - 7:00 PM	Deadline to Town Clerk
June 12, 2012	

- Presentation Reports Consent Ordinance
 Resolution Quasi-Judicial Old Business New Business
 FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Neighborhood Improvement and Maintenance Agreement with the Terra Mar Island Civic Association

EXPLANATION: According to the grant policy adopted by the Commission, neighborhood associations are required to maintain certain types of improvements such as security arm and lighting and also to provide insurance. The Town awarded a \$30,000 Neighborhood Capital Improvement Grant to the Terra Mar Island Civic Association for the renovation of their entryway and several of those improvements require a maintenance agreement with the Town.

The Town prepared maintenance agreement (**Exhibit 1**) has been executed by the Association.

The agreement provides that the Association will keep the listed improvements, which are the entry gates, pedestals, street lights and electrical meters in good repair and working order. In addition, the Association will carry \$1,000,000 in general liability insurance with the Town named as an additional insured. The agreement may be terminated by the Town at any time and by the Association any time after the tenth year of the agreement.

RECOMMENDATION: We recommend Commission approval for the Town Manager to execute the attached Neighborhood Improvement and Maintenance Agreement with the Terra Mar Island Civic Association.

EXHIBITS: 1. Maintenance Agreement

The Agreement has been approved as to form by Town Attorney

Yes No

Town Manager Initials *CB*

Exhibit 1

NEIGHBORHOOD IMPROVEMENT AND MAINTENANCE AGREEMENT

THIS NEIGHBORHOOD IMPROVEMENT AND MAINTENANCE AGREEMENT (the “**Agreement**”) is made and entered into as of the day of _____, 2012, by and between the **TOWN OF LAUDERDALE-BY-THE-SEA**, a Florida municipal corporation, (“**TOWN**”), whose mailing address is 4501 N. Ocean Drive, Lauderdale-By-The-Sea, FL 33308 and Terra Mar Islands Civic Association (“**GRANTEE**”), whose mailing address is PO Box 610055, Pompano Beach, FL 33061.

RECITALS

WHEREAS, GRANTEE is an incorporated neighborhood association within the TOWN; and,

WHEREAS, GRANTEE has received a grant from TOWN in the amount of \$26,000 to be used for certain improvements (“**Improvements**”) located or to be located on TOWN property (“**the Property**”) at the west end of the Terra Mar Bridge and which Improvements are depicted and described in Exhibit “A” attached hereto; and

WHEREAS, the TOWN requires and GRANTEE is willing to accept certain obligations regarding the Improvements; and

WHEREAS, in addition to complying with all of the TOWN’S grant requirements, GRANTEE has agreed to be responsible for certain other obligations as set forth below.

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00) paid by each party to the other, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals are hereby restated and incorporated herein for all purposes.
2. **Installation of Improvements.** GRANTEE shall promptly execute such contracts or enter into such agreements necessary or take otherwise appropriate action to cause the construction, installation and completion of the Improvements on the Property in accordance with Exhibit “A”, the grant requirements, and all applicable laws and regulations, including without limitation, the TOWN Code.
3. **Access for Improvements.** TOWN hereby grants GRANTEE a temporary revocable license to enter the Property for purpose of maintenance, repair and operation (as applicable) of the Improvements. This license automatically expires upon the termination or expiration of this Agreement.
4. **Maintenance and Repair of Certain Improvement Features.** GRANTEE shall have no ownership or equity interest in the Improvements, which are located on public property. GRANTEE agrees, at Grantee’s expense to maintain certain elements of the Improvements, hereafter referred to as “**the Features**”, listed below. GRANTEE shall, at a minimum, maintain and repair the below-listed Features as follows:

Exhibit 1

NEIGHBORHOOD IMPROVEMENT AND MAINTENANCE AGREEMENT

	Features
1.	Mega Arm Tower Entry Gates and road loops
2.	Two (6) six foot concrete pedestals with (2) two 22" low flower pots
3.	Two Beacon street light poles with (2) two LED street lights
4.	One Kelsy Kane up light
5.	Two electrical meter (maintenance and pay for power)

Notwithstanding the foregoing, and not in limitation thereof, Grantee shall at all times keep the Features in good repair and working order at all times and shall repair or replace the Features as necessary. The TOWN may make any repair, upgrade or change to the Improvements it deems necessary at TOWN'S expense at any time without the consent of GRANTEE, but is not required to do so.

5. **Liaisons.** The liaison for the TOWN for this Agreement shall be the Municipal Services Director, 954-640-4233. <mailto:>The liaison for GRANTEE shall be the Terra Mar Island Civic Association President.

6. **Default.** In the event GRANTEE fails to comply with the obligations contained herein and after written notice of default and an opportunity to cure such default within fifteen (15) business days, the TOWN, at its sole option, (1) may complete any such obligation or cure the default and invoice Grantee for the actual cost thereof, (2) may terminate this Agreement upon written notice to Grantee, and/or (3) may remove any and all Improvements. TOWN'S remedies are cumulative and TOWN is not limited to any one or more remedies contained herein or at law or equity.

7. **Term of Agreement.** This Agreement shall continue until the Features are no longer located on or at the Property, unless terminated earlier as provided herein.

8. **Termination** This Agreement may be terminated by TOWN at any time by written notice to GRANTEE. TOWN, at its option, may remove the Improvements, or any part of them, at any time upon providing the written termination notice described above, but TOWN is not required to remove the Improvements. GRANTEE may terminate this Agreement any time after the tenth year of this Agreement.

9. **Release.** TOWN shall have no liability to GRANTEE, or its employees, contractors, agents, and invitees in connection with the Improvements or this Agreement or the subject matter hereof, including, without limitation in connection with, related to, or arising from the maintenance and/or repair and/or operation of the Improvements, or lack thereof. GRANTEE hereby releases the TOWN, its officials, employees and agents with respect to the foregoing and with respect to any claim whatsoever related to the Improvements or the Property and releases TOWN from and against any and all liability

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NEIGHBORHOOD IMPROVEMENT AND MAINTENANCE AGREEMENT

and responsibility in connection with the above-mentioned matters. GRANTEE agrees not to sue or seek any money or damages from the TOWN in connection with the above-mentioned matters.

10. **Insurance.** GRANTEE shall secure and maintain, at all times throughout the term of this Agreement, general liability insurance, with combined single limits of no less than \$1,000,000.00 per occurrence for bodily injury and property damage coverage, naming the TOWN as an additional insured, in a form of endorsement acceptable to the TOWN Manager. Simultaneously with the execution of this Agreement, GRANTEE shall furnish the TOWN with a policy or certificate of insurance coverage in the minimum amount stated above, together with the endorsement. This policy shall not be affected by any other insurance carried by TOWN. The insurance shall be provided by a carrier having an A.M. Best's Rating of not less than A, Class VII, and shall provide that the policy(ies) may not be canceled by the insurer for 30 days after service of notice of the proposed cancellation upon TOWN and shall not be invalidated as to the interest of TOWN by any act, omission or neglect of Grantees.

11. **Indemnity.** GRANTEE agrees to indemnify, defend and hold harmless the TOWN, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the TOWN or any third party arising out of, or by reason of, or resulting from the Consultant's negligent acts, errors, or omissions or failure to act in relation to this Agreement. The covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to GRANTEE'S responsibility to indemnify.

12. **Warranty of Improvements.** The TOWN does not, by virtue of this Agreement or otherwise, provide any warranty or guaranty with regard to the Improvements.

13. **Attorney's Fees.** The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys' fees and costs as well as attorneys' fees and costs incurred in enforcing this provision.

14. **Waver of Jury Trial.** The TOWN and GRANTEE knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in state and/or federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Agreement and/or arising out of, under, or in connection with the services performed hereunder, or any course of conduct, course of dealing, statements or actions or inactions of any party hereto.

15. **Notices.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, GRANTEE and the TOWN designate as the respective places for giving of notice:

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TOWN: Town Manager
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

COPY TO: Town Attorney
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

GRANTEE: President
PO Box 610055
Pompano Beach, FL 33061

16. **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

17. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

18. **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the TOWN and the GRANTEE and supersedes all prior negotiations, representations or agreements, whether written or oral.

IN WITNESS WHEREOF, TOWN and GRANTEE have executed this Agreement as of the date set forth above.

GRANTEE:

By: _____
Title: _____

Date: _____

TOWN:

By: _____
CONSTANCE HOFFMANN, TOWN MANAGER

Date: _____

ATTEST: