

Temporary Access Agreement for the Shore Protection Project, Segment II

This Temporary Access Agreement (“Agreement”) is entered and entered into this _____ day of _____, between the City of Pompano Beach, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (“City”), and Broward County, a political subdivision of the State of Florida, whose address is 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 (“County”) (each a “Party” and collectively referred to as the “Parties”).

RECITALS

A. City is the owner of the real properties located in Broward County, Florida described in Composite Exhibit A, consisting of the description and a map of the properties, attached hereto and made a part hereof (“Property”).

B. Florida Department of Environmental Protection issued the County Consolidated Joint Coastal Permit and Sovereign Submerged Lands Authorization (Permit numbers 0314535-001-JC and 0394925-001-JC) to perform beach tilling and escarpment removal, which are a component of the County’s beach renourishment and restoration activities, at various locations, including City’s Property.

C. County desires temporary access on, over, across, and through the Property for the purpose of facilitating the beach tilling and escarpment removal components of a federally authorized beach restoration project, commonly known as the “Shore Protection Project, Segment II.”

D. County also desires authorization to utilize portions of the Property marked “Staging Areas” to stage and store vehicles and equipment overnight that are necessary to conduct the Shore Protection Project, Segment II.

E. City desires to grant such access to County in accordance with the terms set forth herein so that County may help facilitate and complete the Shore Protection Project, Segment II.

NOW, THEREFORE, in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00), the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and such recitals are incorporated herein by reference.
2. Grant of Access. City hereby grants unto County, its contractors, subcontractors, consultants, and employees access on, over, across, and through the Property to perform beach tilling and escarpment removal as well as inspection and monitoring of the same and

any incidental uses necessary thereto, during the term of this Agreement as such term is hereinafter described. Specifically, the County and its contractors, subcontractors, consultants, and employees are authorized to till and remove the escarpment on the beach areas denoted by the green/blue/red lines on Exhibit A. County and its contractors, subcontractors, consultants, and employees are authorized to access the beach at the beach access points designated in Exhibit A and marked on the accompanying map. Finally, County and its contractors, subcontractors, consultants, and employees may stage and store equipment and vehicles overnight at the staging and storing locations described and indicated in Exhibit A.

3. Term. The Agreement shall be effective as of the date it is fully executed by the Parties (“Effective Date”) and shall continue until November 1, 2025, or the beach tilling is completed, whichever occurs first.

4. Obligation to Restore. If the Property or any property located thereon is damaged by County or County’s contractors, subcontractors, consultants, or employees as a result of their entry upon or use of the Property, County shall, at its expense, promptly and with due diligence restore and repair the damaged portion(s) of the Property to the same condition as existed prior to County’s use of the Property.

5. Termination. This Agreement may be terminated:

- a. By either Party with at least sixty (60) calendar days advance written notice to the other Party.
- b. For cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience in accordance with Section 5(c).
- c. For convenience by Broward County Board of County Commissioners with at least thirty (30) calendar days advance written notice to City. City acknowledges that it has received good, valuable, and sufficient consideration for County’s right to terminate this Agreement for convenience including in the form of County’s obligation to provide advance notice to City of such termination in accordance with this section.
- d. By the Broward County Administrator (“County Administrator”) upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public, health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of costs incurred by County due to City's failure to comply with any term(s) of this Agreement.

6. Insurance. The Parties are entities subject to Section 768.28, Florida Statutes. County will maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes. Upon request, County shall provide written verification of liability protection in accordance with state law. Prior to any County contractor, subcontractor, or consultant using the Property, County shall require such contractor, subcontractor, or consultant to provide insurance coverage with minimum limits of coverage indicated in Exhibit B, and naming County and City as additional insureds on the commercial general liability and business automobile liability policies.

7. Governmental Immunity and Liability. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by either Party nor shall anything included herein be construed as consent by either Party to be sued by a third party in any matter arising out of this Agreement. Each Party is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the acts and omissions of its agents or employees to the extent required by applicable law. County will include indemnification language, substantially in the form below, in all contracts whereby County allows a party to access the Property pursuant to this Agreement:

Contractor shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend County and City, or their officers, agents, servants, and employees (collectively and individually "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of 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. In the event any lawsuit or other proceeding is brought against an Indemnified Party by reason of any such claim, cause of action, or demand, Contractor shall, upon written notice from County, resist and defend such lawsuit or proceeding by

counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend County and City. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

8. Disruption. County will require all contractors, subcontractors, and consultants to utilize their best efforts to minimize impacts and disruption to City's Property and surrounding areas.

9. Notice. Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the Party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For County:

Real Property Section
Broward County Governmental Center, Room 326
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

For City:

City Manager
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33060

9. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

10. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

11. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

12. Further Assurances. The Parties shall execute all such instruments, and agree to take all such further actions, that may be reasonably required by any Party to fully effectuate the terms and provisions of this Agreement.

13. Amendments. The Contract Administrator is authorized to amend this Agreement to modify the access and staging locations if Parties reasonably determine the access and staging locations identified in Exhibit A are unsuitable. Unless expressly authorized herein, no modification, amendment, or alternation of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of the City and County.

14. Survival. Either Party's right to monitor, evaluate, enforce, audit, and review, any obligations to indemnify and insure, any assurances and certifications, and items of financial responsibility shall survive the expiration or earlier termination of this Agreement but shall expire upon expiration of the statute of limitation as to that particular matter. Any provision of this Agreement which contains a restriction or requirement which extends beyond the date of termination or expiration set forth herein shall survive expiration or earlier termination of this Agreement and be enforceable but shall expire upon expiration of the statute of limitation as to that particular matter.

15. Independent Contractor. Each Party is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing services, neither that Party nor its agents shall act as officers, employees, or agents of the other Party. The Parties shall not have the right to bind either Party to any obligation not expressly undertaken by that Party under this Agreement.

16. Third Party Beneficiaries. Neither Party intends to primarily or directly benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

17. Assignment. Neither this Agreement nor any right or interest herein may be assigned by either Party without the prior written consent of the other Party. This provision shall not be construed to prohibit County from allowing others performing services for County related to the Shore Protection Project, Segment III, to use the Property; such use, however, shall not confer any right of the other Party to claim any rights under this Agreement. If a Party violates this provision, the other Party shall have the right to immediately terminate this Agreement.

18. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or a modification of this Agreement. A waiver of any breach shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

19. Compliance with Laws. Each Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations.

20. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

21. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

22. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

23. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

24. Incorporation by Reference. The attached exhibits are incorporated into and made a part of this Agreement.

25. Force Majeure. If the performance of this Agreement, or any obligation hereunder, is prevented by reason of hurricane, earthquake, or other casualty caused by nature, epidemic, pandemic, or other public health emergency, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency (collectively, "Force Majeure Event"), the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the affected Party shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such inability to perform due to the Force Majeure Event exceeds sixty (60) consecutive days, the Party that was not prevented from performance by the Force

Majeure Event has the right to terminate this Agreement upon written notice to the other Party. This section shall not supersede or prevent the exercise of any right either Party may otherwise have to terminate this Agreement.

26. Representation of Authority. Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Temporary Access Agreement for the Shore Protection Project, Segment II on the respective dates under each signature: Broward County, by and through its Board of County Commissioners, signing by its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2024, and City of Pompano Beach, signing by and through its _____, duly authorized to execute same by Commission action on the _____ day of _____, 2024.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
Its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
____ day of _____, 2024

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Jennifer D. Brown (Date)
Senior Assistant County Attorney

By _____
Maite Azcoitia (Date)
Deputy County Attorney

JDB/gmb
___/___/2024
#

Temporary Access Agreement for the Shore Protection Project, Segment II

CITY

City of Pompano Beach, a
Florida Municipal Corporation

ATTEST:

By: _____
CITY MAYOR

CITY CLERK

Print Name

____ day of _____, 20__

I HEREBY CERTIFY that I have approved this Agreement as to form and legal sufficiency subject to execution by the parties:

City Attorney

Exhibit A Property

BEACH TILLING LOCATION:

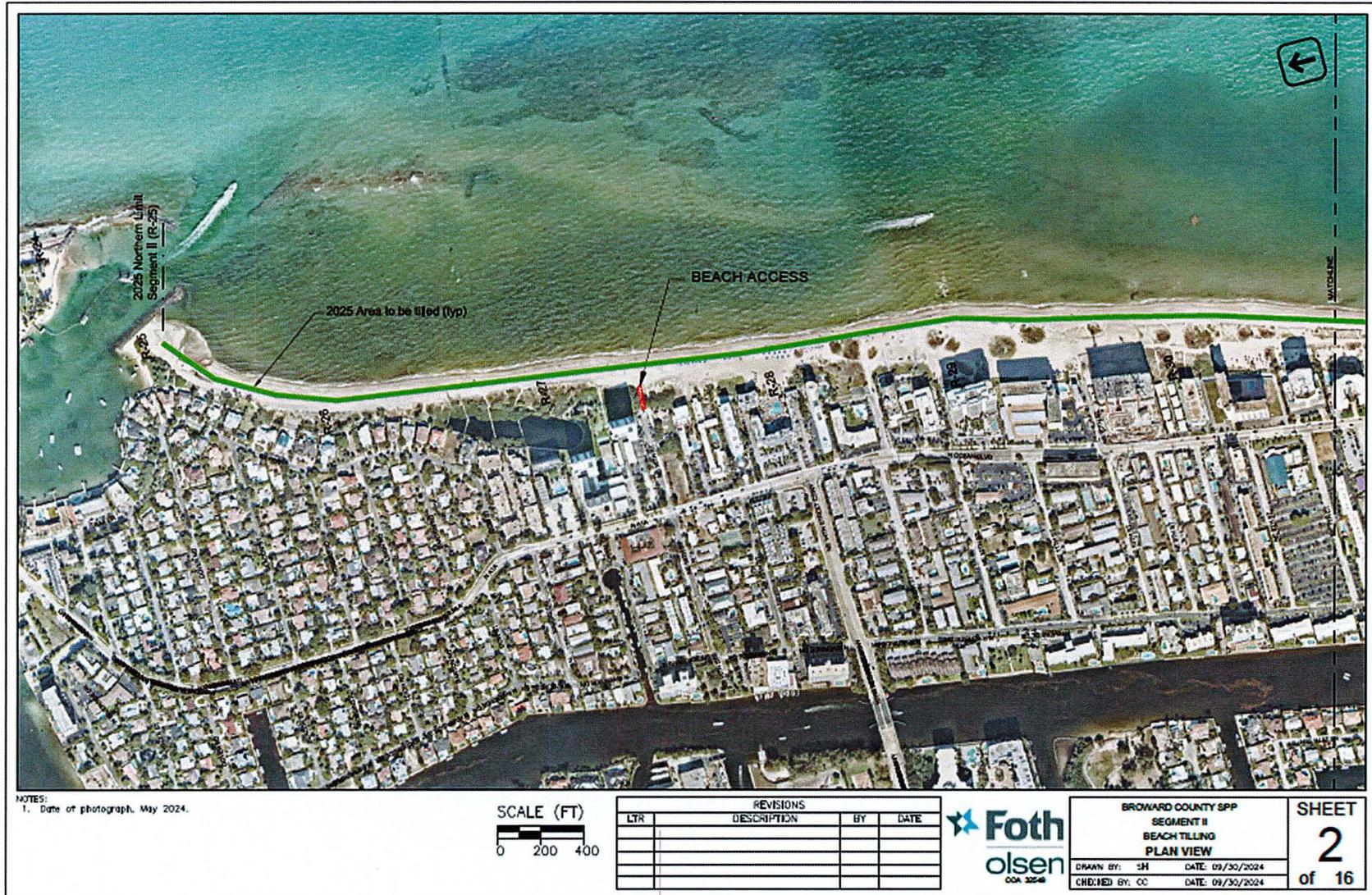
The sandy beach above the mean high water line to the easternmost edge of the dune vegetation, seawall, or other structure from Florida Department of Environmental Protection Range Monument (R) 25 to R-41.

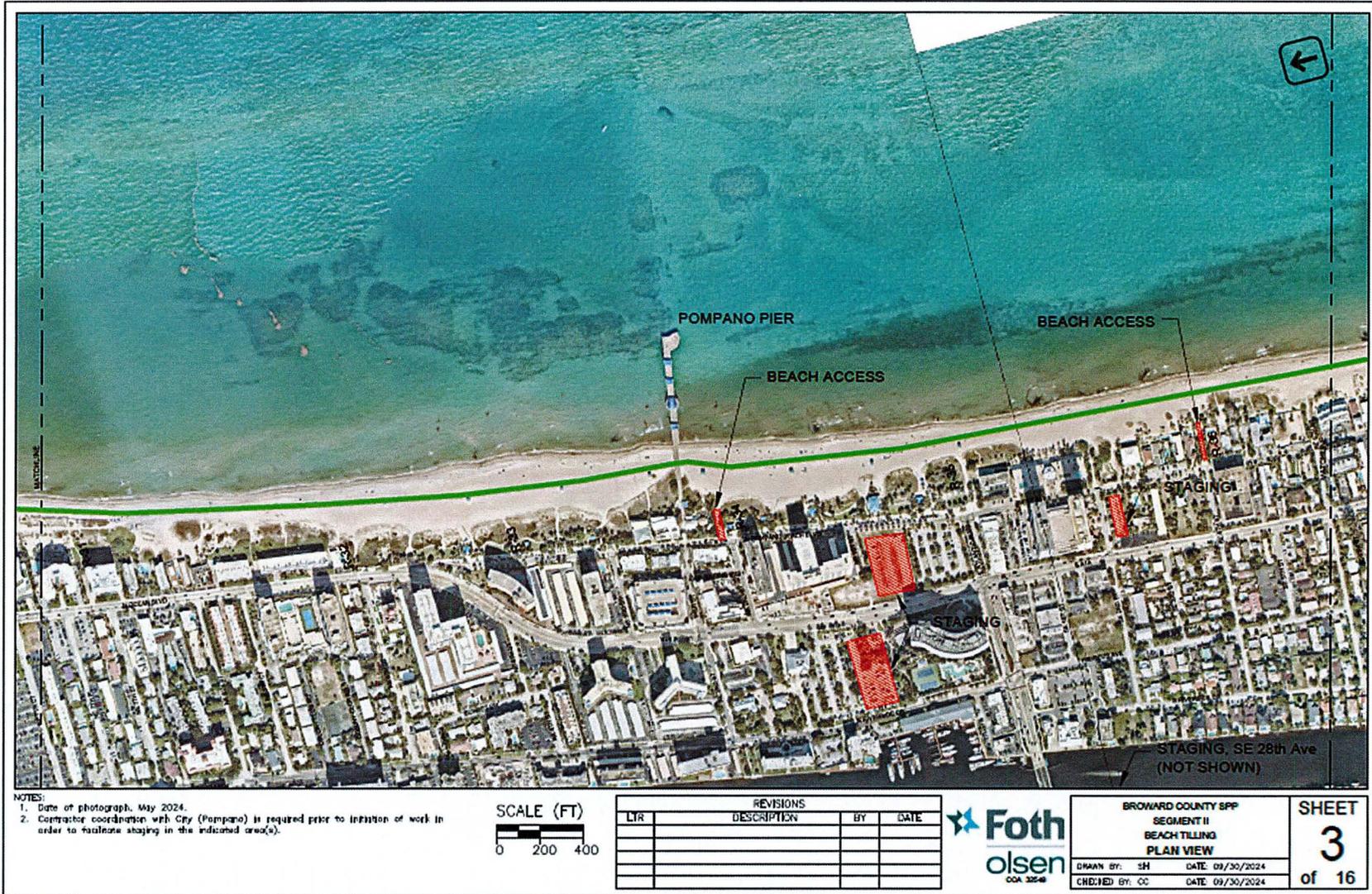
BEACH ACCESS LOCATIONS:

- The eastern end of Northeast 16th Street (no gate/no lock);
- The emergency vehicle access on North Pompano Beach Boulevard immediately south of the Pompano Municipal Pier and just north of Northeast 2nd Street (no gate/no lock);
- The eastern end of Southeast 4th Street (no gate/no lock); and
- The eastern end of Southeast 12th Street (no gate/no lock).

STORING AND STAGING AREAS:

- The parking lot located at 109 North Ocean Boulevard, south of Pompano Beach Fire Station 11;
- The central parking lot located at 20 North Ocean Boulevard;
- The parking lot located at 140 Southeast 28th Avenue; and
- The parking area at the southwest corner of Briny Avenue and Southeast 2nd Street.





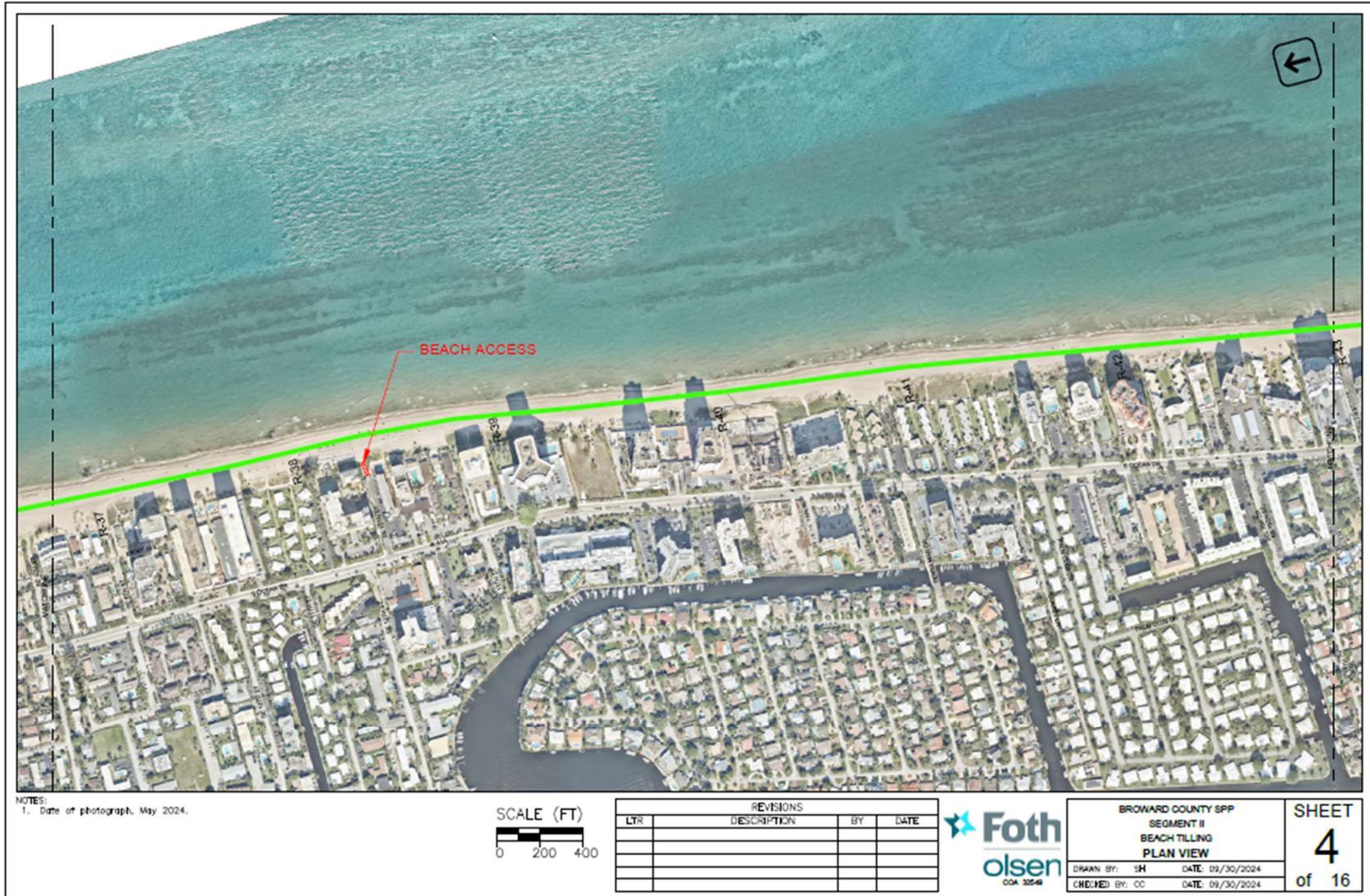


Exhibit B Minimum Insurance Requirements

INSURANCE REQUIREMENTS

Project: Segments II and III Beach Tilling and Escarpment Removal
Agency: Resilient Environment Department

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> XCU - Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Protection and Indemnity Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>			Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	
<input checked="" type="checkbox"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>				\$2,000,000	
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY			Each Accident	\$500,000	
<input checked="" type="checkbox"/> POLLUTION/ENVIRONMENTAL LIABILITY			Each Claim:	\$1,000,000	
			*Maximum Deductible:	\$10,000	
Description of Operations: Broward County is additional insured for liability. Insured's insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Waiver of subrogation applies in favor of Broward County. For Claims-Made policies insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.					

CERTIFICATE HOLDER:
Broward County
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

 Digitally signed by
 COLLEEN
 POUNALL
 Date: 2024.12.11
 13:14:30 -05'00'

 Risk Management Division