

# TOWN OF LOXAHATCHEE GROVES

TOWN HALL COUNCIL CHAMBERS

## TOWN COUNCIL REGULAR MEETING

**Community Open Discussion Meeting 6:00-6:55 PM (Non-Agenda Items Workshop)**

### AGENDA

**OCTOBER 5, 2021 - 7:00 - 10:30 P.M.**



**Robert Shorr, Mayor (Seat 4)**

**Phillis Maniglia, Councilmember (Seat 1)**

**Laura Danowski, Vice Mayor (Seat 2)**

**Marianne Miles, Councilmember (Seat 3)**

**Marge Herzog, Councilmember (Seat 4)**

### Administration

Town Manager, James S. Titcomb

Assistant Town Manager, Francine L. Ramaglia

Town Attorney, Elizabeth Lenihan, Esq.

Town Clerk, Lakisha Q. Burch

Public Works Director, Larry A. Peters, P.E.

**Civility:** Being "civil" is not a restraint on the First Amendment right to speak out, but it is more than just being polite. Civility is stating your opinions and beliefs, without degrading someone else in the process. Civility requires a person to respect other people's opinions and beliefs even if he or she strongly disagrees. It is finding a common ground for dialogue with others. It is being patient, graceful, and having a strong character. That is why we say "Character Counts" in Town of Loxahatchee. Civility is practiced at all Town meetings.

**Special Needs:** In accordance with the provisions of the American with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall within three business days prior to any proceeding, contact the Town Clerk's Office, 155 F Road, Loxahatchee Groves, Florida, (561) 793-2418.

**Quasi-Judicial Hearings:** Some of the matters on the agenda may be "quasi-judicial" in nature. Town Council Members are required to disclose all ex-parte communications regarding these items and are subject to voir dire (a preliminary examination of a witness or a juror by a judge or council) by any affected party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment, without being sworn. Unsworn comment will be given its appropriate weight by the Town Council.

**Appeal of Decision:** If a person decides to appeal any decision made by the Town Council with respect to any matter considered at this meeting, he or she will need a record of the proceeding, and for that purpose, may need to ensure that a verbatim record of the proceeding is made, which record includes any testimony and evidence upon which the appeal will be based.

**Consent Calendar:** Those matters included under the Consent Calendar are typically self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by a single motion. If discussion on an item is desired, any Town Council Member, without a motion, may "pull" or remove the item to be considered separately. If any item is quasi-judicial, it may be removed from the Consent Calendar to be heard separately, by a Town Council Member, or by any member of the public desiring it to be heard, without a motion.

**TOWN COUNCIL AGENDA ITEMS**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

**ROLL CALL**

**ADDITIONS, DELETIONS AND MODIFICATIONS**

**COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS**

Public Comments for all meetings may be received by email, or in writing to the Town Clerk's Office until 6:00 PM day of the meeting. Comments received will be "received and filed" to be acknowledged as part of the official public record for the meeting. The Town Council meeting will be live-streamed and close-captioned for the general public via our website, instructions are posted there.

**CONSENT AGENDA**

1. Approval of Resolution No. 2021-51 852 "E" Road drainage project.
2. Approval of continuation of OGEM Repair & Overlay Program with Hardrives, Inc. to pave F Road from just south of Collecting Canal Road to Okeechobee Road from Okeechobee Road North to North Road, including 40' East and West on Collecting Canal Road and 40' West of North Road.

**PUBLIC HEARING**

3. Approval of **Ordinance No.2021-08** Qualifying Dates for the March 2022 Election.
4. Approval of **Ordinance No. 2021-09** Referendum to remove Election Qualifying Dates from Town's Charter.
5. Approval of **Ordinance No. 2021-10** adding Qualifying Dates in the Loxahatchee Groves' Code.
6. Approval of **Ordinance No. 2021-11** Referendum to amend Signature Requirements in the Town's Charter.
7. Approval of **Ordinance No. 2021-12** Referendum to amend Canvassing Board in Town's Charter.

**TOWN COUNCILMEMBER COMMENTS**

**Phillis Maniglia (Seat 1)**

**Laura Danowski (Seat 2)**

**Marianne Miles (Seat 3)**

**Marge Herzog (Seat 5)**

**Mayor Robert Shorr (Seat 4)**

**TOWN STAFF COMMENTS**

**Town Manager**

**Assistant Town Manager**

**Town Attorney**

**Public Works Director**

**Town Clerk**

**ADJOURNMENT**

**Comment Cards:**

Note public comment rules may be modified during the COVID-19 pandemic, see above.

Anyone from the public wishing to address the Town Council, it is requested that you complete a Comment Card before speaking. Please fill out completely with your full name and address so that your comments can be entered correctly in the minutes and give to the Town Clerk. During the agenda item portion of the meeting, you may only address the item on the agenda being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.

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155 F Road Loxahatchee Groves, FL 33470

**Agenda Item # 1**

**TO: Town Council of Town of Loxahatchee Groves**  
**FROM: Larry A. Peters, P.E., Director of Public Works**  
**VIA: James Titcomb, Town Manager**  
**SUBJECT: Approval of Resolution No. 2021-51 for Agreement to Purchase & Install Culvert at 852 E Road with BHT Earthworks**

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**Background:**

The Town is in need of a contractor for installation of culverts. The Council came to consensus regarding various drainage/culvert projects, including for 852 E Road, at previous council meetings. The property owner at this specific location provided an easement for drainage many months ago and was assured that, when funds were available, and the requested drainage was approved by Town Council, it would be installed.

Staff has provided multiple quotes for this swale and roadway drainage improvement project based on the Town's current contract with Johnson Davis as well as from an "on the shelf" piggyback agreement with DS Eakins and from the recently expired Town contract with WBI. Additionally, staff obtained an independent quote from a local contractor, BHT Earthworks which is lower than the other contract prices. The individual quotes are attached as follows:

|                |          |
|----------------|----------|
| DS Eakins      | \$73,485 |
| Johnson Davis  | \$39,000 |
| WBI            | \$39,920 |
| BHT Earthworks | \$28,605 |

Based on the above, staff recommends using BHT Earthworks as it provides for the best pricing and because time is of the essence to complete this work. This agreement is pursuant to "Best Interest" as provided by Section 2-133(b)(12) of the Town's Code of Ordinances.

**Recommendations:**

Move to approve Resolution No. 2021-51 for Agreement with BHT Earthworks to provide and install culvert at 852 E Road pursuant to "Best Interest" provisions of the Code of Ordinances.

**TOWN OF LOXAHATCHEE GROVES**

**RESOLUTION NO. 2021-51**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA AUTHORIZING AN AGREEMENT WITH BHT EARTHWORKS, INC. FOR THE PURCHASE AND INSTALLATION OF TWO (2) CULVERTS AT OR NEAR 852 E ROAD AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Loxahatchee Groves (“Town”) is in need of a contractor to provide and install two (2) culverts at or near 852 E Road; and

**WHEREAS**, the Town has contracts with multiple vendors that include culvert installation; and

**WHEREAS**, the Town has received a quote that is lower than the prices awarded in the current Town contracts; and

**WHEREAS**, pursuant to Section 2-133(b)(12) of the Town of Loxahatchee Groves Code of Ordinances, the Town Council has determined that this Agreement is in the best interests of the Town as it provides for the best pricing for purchase and installation of two (2) culverts at or near 852 E Road based on current Town contracts and time is of the essence to complete this work; and

**WHEREAS**, the Town has determined it to be in the best interests of the residents of the Town to execute the attached Agreement for purchase and installation of two (2) culverts at or near 852 E Road.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are hereby adopted as if fully set forth herein.

**Section 2.** The Town Council of the Town of Loxahatchee Groves, Florida hereby approves the Agreement with BHT Earthworks, Inc.

**Section 3.** This Resolution shall take effect immediately upon adoption.

Council Member \_\_\_\_\_ offered the foregoing resolution. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

|                                  | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|----------------------------------|--------------------------|--------------------------|--------------------------|
| Robert Shorr, MAYOR              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Laura Danowski, VICE MAYOR       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Marge Herzog, COUNCIL MEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Marianne Miles, COUNCIL MEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Phillis Maniglia, COUNCIL MEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES,  
FLORIDA, THIS \_\_\_ DAY OF \_\_\_\_\_, 2021.**

**TOWN OF LOXAHATCHEE GROVES  
FLORIDA**

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Vice Mayor

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Council Member

\_\_\_\_\_  
Council Member

\_\_\_\_\_  
Office of the Town Attorney

\_\_\_\_\_  
Council Member

## **AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 between the **Town of Loxahatchee Groves**, Florida, a municipal corporation, hereinafter the "TOWN", with its office located at 155 F Road, Loxahatchee Groves, Florida 33470, and **BHT Earthworks, Inc.**, a corporation authorized to do business in the State of Florida, hereinafter the "CONTRACTOR", with a mailing address of 15209 66th Court N, Loxahatchee, Florida 33470.

### **RECITALS**

WHEREAS, the TOWN is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida;

WHEREAS, the TOWN is in need of a contractor to provide and install two culverts at or near 852 E Road;

WHEREAS, CONTRACTOR submitted a quote that is lower than current Town contracts;

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of providing the material hereunder in a professional and competent manner; and

WHEREAS, the TOWN finds awarding the contract to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the TOWN hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

#### **1. SCOPE OF WORK**

1.1 The scope of work is to provide and install two (2) 18 inch culverts at or near 852 E Road, including related work, as described in Exhibit "A", Scope of Work, attached hereto and incorporated herein. A depiction of the site is attached hereto as Exhibit "B".

1.2 The CONTRACTOR represents to the TOWN that the services and materials provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the materials shall conform to the highest standards and in accordance with this Agreement.

1.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and

experience to perform the work provided for herein in a professional and competent manner.

1.4 The CONTRACTOR represents that it is familiar with the Scope of Work to be completed under this Agreement, site locality, local conditions and Laws and Regulations that in any manner may affect the cost, progress, performance or furnishing of the Scope of Work. The CONTRACTOR further represents it has studied the physical conditions at or contiguous to the site that in any manner may affect the cost, progress, performance or furnishing of the Scope of Work and has determined it can perform the Scope of Work.

1.5 The CONTRACTOR shall preserve from damage all property along the line of the work, or which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not called for by the plans. Wherever such property is damaged due to the activities of the CONTRACTOR, it shall be immediately restored to its original condition by the CONTRACTOR at no cost to the TOWN.

1.6 The CONTRACTOR shall keep the site free of rubbish and other materials and restore to their original conditions those portions of the site not designated for alteration by the Scope of Work. Clean up and restoration shall be accomplished on a continuing basis throughout the term of this Agreement and in such a manner as to maintain a minimum of nuisance and interference to the general public and residents in the vicinity of the work.

1.7 The CONTRACTOR shall at all times so conduct its work as to ensure the least possible obstruction to traffic, or inconvenience to the general public and residents in the vicinity of the work. No road or street shall be closed to the public, except with the permission of the TOWN. The CONTRACTOR shall provide for and follow all Maintenance of Traffic requirements in accordance with Section 102 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 2007 Edition.

1.8 It is the CONTRACTOR's responsibility to contact all owners of structures or utilities above ground, on the surface, or below the ground, within the Scope of Work area so that said owners may stake or otherwise mark or protect their facilities. When structures and utilities have been properly shown or marked and are disturbed or damaged in the execution of the work, they must be repaired immediately by the CONTRACTOR in conformance with best standard practice and the approval of the owner of the damaged utility or structure. In the case of structures and utilities which have not been properly shown or located as outlined above and are disturbed or damaged in the prosecution of the work, the CONTRACTOR must take whatever steps are necessary for safety and notify the affected utility owner and avoid any actions which might cause further damage to the structure or utility.

1.9 All excess excavated material and debris not required for backfill (unless otherwise noted), broken pipe, and any concrete items, together with all roots, boards and other debris are to be disposed of by the CONTRACTOR at an appropriate legal site as designated by the Palm Beach County Solid Waste Authority.

1.10 The CONTRACTOR shall be responsible for protecting and restoring all land and property corners, such as section corners, ¼ section corners, property corners or block control points, and for maintaining all horizontal and vertical control points. All surveying work shall be the responsibility of the CONTRACTOR and shall be performed under the supervision of a Florida Registered Land Surveyor. Survey points that will be destroyed during construction shall be properly referenced and replaced at the CONTRACTOR's expense with permanent monuments approved by the TOWN.

## **2. USE OF AGENTS OR ASSISTANTS**

2.1 To the extent reasonably necessary to enable the CONTRACTOR to perform its work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

## **3. FEE AND TERM**

3.1 For the goods/services to be provided under this Agreement, the CONTRACTOR shall be entitled to payment as set forth in CONTRACTOR's quote, as set forth in Exhibit "A".

3.2 Should the TOWN require additional services or materials, not included in this Agreement, fees and payment for such work will be set forth in a separate Addendum, as authorized in accordance with the TOWN's procurement code prior to any such additional goods being provided by the CONTRACTOR.

3.3 The initial term of the Agreement shall become effective upon approval by both parties and shall extend until December 30, 2021, unless terminated earlier, as provided below.

## **4. MAXIMUM COSTS**

4.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to provide the goods and services shall be specified in the CONTRACTOR's quote, and no additional costs shall be authorized without prior written approval from the appropriate authority.

## **5. INVOICE**

5.1 Upon completion and acceptance of the Scope of Work, the CONTRACTOR shall submit an itemized invoice to the TOWN for approval prior to receiving compensation. The CONTRACTOR shall be paid within twenty (20) days of receipt of an invoice for the goods and services. All invoices will be paid in accordance with the Local Government Prompt Payment Act.

## **6. COPIES OF DATA/DOCUMENTS**

6.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the TOWN. Data collected, stored, and/or provided shall be in a form acceptable to the TOWN and agreed upon by the TOWN.

## **7. OWNERSHIP**

7.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the TOWN.

## **8. DEFAULTS, TERMINATION OF AGREEMENT**

8.1 If the CONTRACTOR fails to satisfactorily perform the work specified in this Agreement; or, is in material breach of a term or condition of this Agreement, the Town Manager may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the Town Manager, the TOWN may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another CONTRACTOR to provide for such work; and/or, the TOWN may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the Town Manager, the TOWN may elect to terminate this Agreement. No compensation shall be paid for demobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 8.1.

8.2 Notwithstanding paragraph 8.1, the TOWN reserves the right and may elect to terminate this Agreement at any time, with or without cause, upon notice from the TOWN Manager. At such time, the CONTRACTOR would be compensated only for the goods

and services provided to the date of termination. In the event material has been ordered or is in the process of being manufactured, the TOWN must pay for all material ordered or manufactured. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 8.2.

## **9. INSURANCE**

9.1 The CONTRACTOR, shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the TOWN, the types and amounts of insurance conforming to the minimum requirements set forth below. The CONTRACTOR shall not commence services until the required insurance is in force and evidence of insurance acceptable to the TOWN has been provided to, and approved by, the TOWN. An appropriate Certification of Insurance shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the CONTRACTOR shall provide the TOWN with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

A. The CONTRACTOR shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate, to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

B. The CONTRACTOR shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

C. The CONTRACTOR shall maintain, during the life of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

All insurance, other than Worker's Compensation, to be maintained by the CONTRACTOR shall specifically include the TOWN as an "Additional Insured".

9.2 The insurance provided by the CONTRACTOR shall apply on a primary basis and include a waiver of subrogation. Any insurance, or self-insurance, maintained by the TOWN Council shall be excess of, and shall not contribute with, the insurance provided by the CONTRACTOR. Except as otherwise specified, no deductible or self-insured retention is permitted.

9.3 Compliance with these insurance requirements shall not limit the liability of the CONTRACTOR. Any remedy provided to the TOWN by the insurance provided by the TOWN shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the CONTRACTOR) available to the TOWN under this Agreement or otherwise.

9.4 Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required by this Agreement.

9.5 The CONTRACTOR's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the TOWN may immediately terminate or suspend this Agreement. In the event of any termination or suspension, the TOWN may use the services of another contractor without the TOWN incurring any liability to the CONTRACTOR.

9.6 At its sole discretion, the TOWN may obtain or renew the CONTRACTOR's insurance, and the TOWN may pay all or part of the premiums. Upon demand, the CONTRACTOR shall repay the TOWN all monies paid to obtain or renew the insurance. The TOWN may offset the cost of the premium against any monies due the CONTRACTOR from the TOWN.

## **10. WAIVER OF BREACH**

10.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

## **11. INDEMNITY**

11.1 The parties recognize that the CONTRACTOR is an independent contractor. The CONTRACTOR agrees to assume liability for and indemnify, hold harmless, and defend the TOWN, its elected officials, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentional wrongful

misconduct of the CONTRACTOR, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the CONTRACTOR in the performance of this Agreement. This includes claims made by the employees of the CONTRACTOR against the TOWN and the CONTRACTOR hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

11.2 Subject to the limitations set forth in this Section, CONTRACTOR shall assume control of the defense of any claim asserted by a third party against the TOWN and, in connection with such defense, shall appoint lead counsel, in each case at the CONTRACTOR's expense. The TOWN shall have the right, at its option, to participate in the defense of any third party claim, without relieving CONTRACTOR of any of its obligations hereunder. If the CONTRACTOR assumes control of the defense of any third party claim in accordance with this paragraph, the CONTRACTOR shall obtain the prior written consent of the TOWN before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the CONTRACTOR shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the TOWN and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the TOWN, be detrimental in any material respect to the TOWN's reputation; (ii) the third party claim seeks an injunction or equitable relief against the TOWN; or (iii) the CONTRACTOR has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

11.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. CONTRACTOR expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the TOWN may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

## **12. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

12.1 This Agreement consists of the terms and conditions provided herein and, the CONTRACTOR's quote. To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail and then the quote. Wherever possible, the provisions of such

documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

12.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

### **13. ASSIGNMENT**

13.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the TOWN and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the TOWN and the CONTRACTOR and not for the benefit of any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the TOWN's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the TOWN may immediately terminate or suspend this Agreement.

13.2 In the event the TOWN consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

### **14. SUCCESSORS AND ASSIGNS**

14.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

### **15. WAIVER OF TRIAL BY JURY**

15.1 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.

### **16. GOVERNING LAW AND REMEDIES**

16.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

16.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in

equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **17. TIME IS OF THE ESSENCE**

17.1 Time is of the essence in the Scope of Work as specified herein.

## **18. NOTICES**

18.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3<sup>rd</sup>) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the TOWN or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the TOWN shall be given to the TOWN address as follows:

Town Manager  
TOWN of Loxahatchee Groves  
155 F road  
Loxahatchee Groves, Florida 33470

All notices, demands or requests from the TOWN to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

BHT Earthworks, Inc.  
15209 66<sup>th</sup> Court N  
Loxahatchee, FL 33470

## **19. SEVERABILITY**

19.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

## **20. DELAYS AND FORCES OF NATURE**

20.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the TOWN shall consider the facts and extent of any

such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the TOWN in its sole discretion, the time of completion shall be extended for any reasonable time that the TOWN, in its sole discretion, may decide; subject to the TOWN's rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the TOWN or its employees, or by any other CONTRACTOR employed by the TOWN, or by changes ordered by the TOWN, unavoidable casualties, or any causes beyond the CONTRACTOR's control, or by delay authorized by the TOWN pending negotiation or by any cause which the TOWN, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the TOWN, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the TOWN. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

20.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

## **21. COUNTERPARTS**

21.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

## **22. LIMITATIONS OF LIABILITY**

22.1 Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

## **23. PUBLIC ENTITY CRIMES**

23.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted CONTRACTOR list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a CONTRACTOR, supplier or sub-CONTRACTOR under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted CONTRACTOR list. CONTRACTOR will advise the TOWN immediately if it becomes aware of any violation of this statute.

## **24. PREPARATION**

24.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

## **25. PALM BEACH COUNTY INSPECTOR GENERAL**

25.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

## **26. ENFORCEMENT COSTS**

26.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

## **27. PUBLIC RECORDS**

CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the TOWN as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the TOWN to perform the service.

- (b) Upon request from the TOWN's custodian of public records or designee, provide the TOWN 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) 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 this Contract and following completion of this Contract if the CONTRACTOR does not transfer the records to the TOWN.
- (d) Upon completion of this Contract, transfer, at no cost, to the TOWN all public records in possession of the CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If the CONTRACTOR transfers all public records to the TOWN upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records or designee, in a format that is compatible with the information technology systems of the TOWN.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 561-793-2418, [lburch@loxahatcheegrovesfl.gov](mailto:lburch@loxahatcheegrovesfl.gov), OR BY MAIL AT TOWN OF LOXAHATCHEE GROVES, 155 F ROAD, LOXAHATCHEE GROVES, FL 33470.**

## **28. COPYRIGHTS AND/OR PATENT RIGHTS**

28.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling the goods, shipped or ordered, as a result of this proposal and the CONTRACTOR agrees to hold the TOWN harmless from any and all liability, loss, or expense occasioned by any such violation.

## **29. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH**

29.1 CONTRACTOR certifies that all services, material, equipment, etc., provided in this Agreement meet all OSHA requirements. CONTRACTOR further certifies that, if the services, material, equipment, etc., provided, is subsequently found to be deficient in any

OSHA requirements in effect on date of delivery or performance, all costs necessary to bring the services, material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

### **30. FEDERAL AND STATE TAX**

30.1 The TOWN is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will sign an exemption if requested by the CONTRACTOR. CONTRACTOR shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the TOWN, nor shall CONTRACTOR be authorized to use the TOWN's Tax Exemption Number in securing such materials.

### **31. PROTECTION OF PROPERTY**

31.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the TOWN or of other contractors and shall be held responsible for replacing or repairing any such loss or damage. The TOWN may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The TOWN will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

### **32. DAMAGE TO PERSONS OR PROPERTY**

32.1 The responsibility for all damage to person or property arising out of or on account of work done under this Agreement shall rest upon the CONTRACTOR, and he/she shall save the TOWN, its employees, officials and agents thereof harmless from all claims made on account of such damages.

### **33. RESERVED**

### **35. SCRUTINIZED COMPANIES**

35.1 As provided in F.S. 287.135, by entering into any agreement with the TOWN, or performing any work in furtherance hereof, the CONTRACTOR certifies that CONTRACTOR and CONTRACTOR's affiliates, suppliers, subcontractors and consultants that will perform hereunder that at the time the CONTRACTOR submits a bid or proposal for a contract or before the CONTRACTOR enters into or renews a contract with an agency or local governmental entity for goods or services of \$1 million or more, the company must certify that the CONTRACTOR is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or

Syria. Also, at the time a CONTRACTOR submits a bid or proposal for a contract or before the CONTRACTOR enters into or renews a contract with an agency or local governmental entity for goods or services of any amount, the CONTRACTOR must certify that it is not participating in a boycott of Israel. If the Town determines, using credible information available to the public, that a false certification has been submitted by the CONTRACTOR, the TOWN's Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of the Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes.

### **36. E-VERIFY**

36.1 Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, CONTRACTOR shall:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- c. Maintain copies of all subcontractor affidavits for the duration of the Contract Documents and provide the same to Subscriber upon Request;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and
- f. Be aware that if TOWN terminates this Agreement under Section 448.095(2)(e), Florida Statutes, CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which this Agreement is terminated and will be liable for any additional costs incurred by TOWN as a result of termination of this Agreement.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written.

ATTEST:

**TOWN OF LOXAHATCHEE GROVES,  
FLORIDA**

\_\_\_\_\_  
Lakisha Burch, Town Clerk

By: \_\_\_\_\_  
Robert Shorr, Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Town Attorney

CONTRACTOR:

**BHT EARTHWORKS, INC, a corporation  
authorized to do business in the State of  
Florida**

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

[Corporate Seal]

Print Name: Anthony J. Lucier  
Title: President

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence or \_\_\_ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_ by Anthony J. Lucier, as President, of BHT Earthworks, Inc., a company authorized to do business in the State of Florida, and \_\_\_ who is personally known to me or \_\_\_ who has produced \_\_\_\_\_ as identification.

Notary Public

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**Exhibit “A”**  
**Scope of Work**

# Town of Loxahatchee Groves

## Public Works Department

### Bid for Culvert Installation

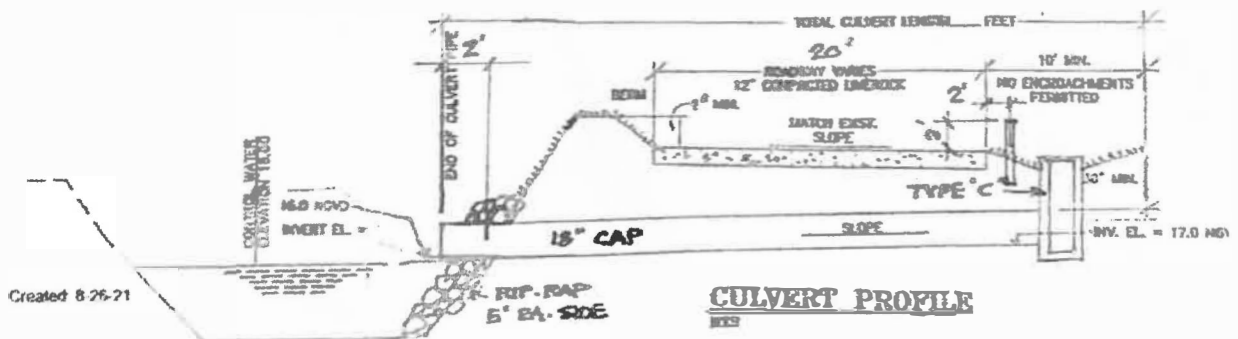
#### Scope of Work:

AJ BHT Earthworks Inc. (561) 603-6969  
 per Professional Trading (561) 797-4522

Remove and dispose of existing tree stumps along proposed swale. Install two 18" culverts with Type C Inlets, rip-rap and sodded outlets, and connecting swales. Regrade new shell road driveway as needed.

See below culvert profile, attached typical Type C Inlet and location map.

| Item                                         | Quantity | Unit | Unit Cost  | Extension     |
|----------------------------------------------|----------|------|------------|---------------|
| Mobilization                                 | 1        | LS.  | \$ 500     | \$ 500        |
| MOT                                          | 1        | LS.  | \$ 850     | \$ 850        |
| Clearing & Grubbing (Tree stumps)            | 9        | Ea.  | \$ 500     | \$ 4500       |
| Install Type C Inlet                         | 2        | Ea.  | \$ 4512.50 | \$ 9025       |
| Install 18" CAP and backfill                 | 2        | Ea.  | \$ 2200    | \$ 4400       |
| Soil Testing                                 | 1        | LS.  | \$ 850     | \$ 850        |
| Install 10' Rip rap rubble Canal Embankment  | 2        | Ea.  | \$ 900     | \$ 1800       |
| Install Sod 5' North and South on Canal Bank | 2        | Ea.  | \$ 200     | \$ 400        |
| Construct Swale and Sod                      | 10'x330' | LS.  | \$ 4200    | \$ 4200       |
| Place 7" Dia. Wood Bollards at 15' O.C.      | 22       | Ea.  | \$ 61.81   | \$ 1360       |
| Driveway Reconstruction (if required)        | 1        | LS.  | \$ 720     | \$ 720        |
| <b>Total Estimate</b>                        |          |      |            | <b>28,605</b> |



**Exhibit “B”**  
**Site Depiction**



Construct 10' wide x 330' Swale, Type C Inlets, 18" ACP, and Rip Rap Bank Outlet  
at locations shown for property at 852 E Road.



41414317015020080 852 E ROAD





CONTRACTING OF PALM BEACH, INC.  
1544 "B" Road  
LOXAHATCHEE, FL 33470  
PHONE 561-718-3319

EMAIL [jorgcperezatwbi@aol.com](mailto:jorgcperezatwbi@aol.com)

## PROPOSAL/CONTRACT

Proposal submitted to: Town of Loxahatchee Groves  
155 F Road  
Loxahatchee, FL 33470  
Phone: 561-793-2418

Email: [lpeters@loxahatcheegrovesfl.gov](mailto:lpeters@loxahatcheegrovesfl.gov)  
Contact: Larry Peters

June 28, 2021

Proposal submitted by Jorge Perez  
Job Name: 852 E Road, Mcneely

We offer the following proposal subject to the terms outlined as follows:

**Install two Type C Inlets and connecting swales. Regrade new shell rock driveway, remove and dispose of existing tree stumps along proposed swale.**

|                           |        |       |                    |
|---------------------------|--------|-------|--------------------|
| Mobilization              | 1 l.s. | 1600  | \$1600.00          |
| Clearing & Grubbing       | 9 ea.  | 400   | \$3,600.00         |
| Type C Inlet installation | 2 ea.  | 16700 | \$33,400.00        |
| Soil testing              | 1 l.s. | 520   | \$520.00           |
| Driveway Reconstruction   | 1 ea   | 800   | \$800.00           |
|                           |        |       | <b>\$39,920.00</b> |

**TOTAL ESTIMATE: \$39,920.00**

PRICES VALID FOR 90 DAYS

Accepted by: \_\_\_\_\_

# Town of Loxahatchee Groves

## Public Works Department

### Bid for Culvert Installation

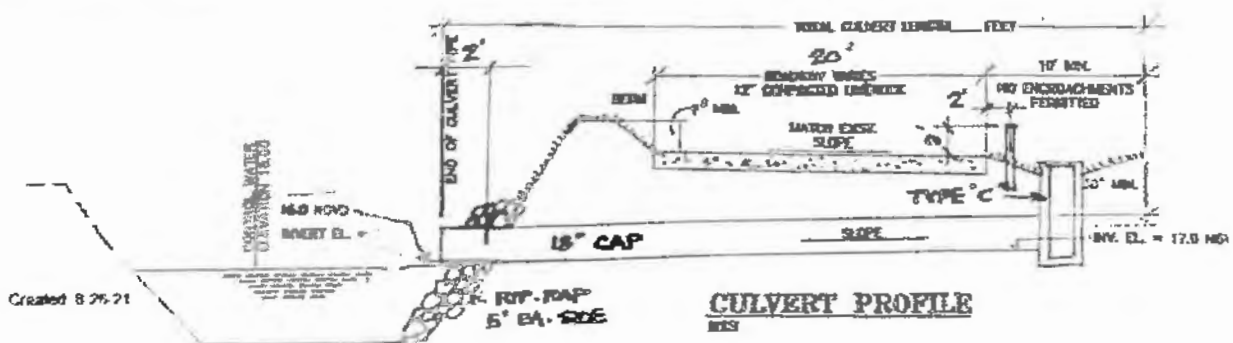
#### Scope of Work:

AJ BHT Earthworks Inc (561) 603-6969  
 PWT Professional Trading (561) 747-4522

Remove and dispose of existing tree stumps along proposed swale. Install two 18" culverts with Type C Inlets, rip-rap and sodded outlets, and connecting swales. Regrade new shell road driveway as needed.

See below culvert profile, attached typical Type C Inlet and location map.

| Item                                         | Quantity | Unit | Unit Cost  | Extension     |
|----------------------------------------------|----------|------|------------|---------------|
| Mobilization                                 | 1        | LS.  | \$ 500     | \$ 500        |
| MOT                                          | 1        | LS.  | \$ 850     | \$ 850        |
| Clearing & Grubbing (Tree stumps)            | 9        | Ea   | \$ 500     | \$ 4500       |
| Install Type C Inlet                         | 2        | Ea   | \$ 4512.50 | \$ 9025       |
| Install 18" CAP and backfill                 | 2        | Ea   | \$ 2200    | \$ 4400       |
| Soil Testing                                 | 1        | LS.  | \$ 850     | \$ 850        |
| Install 10' Rip rap rubble Canal Embankment  | 2        | Ea   | \$ 900     | \$ 1800       |
| Install Sod 5' North and South on Canal Bank | 2        | Ea   | \$ 200     | \$ 400        |
| Construct Swale and Sod                      | 10'x330' | LS.  | \$ 4200    | \$ 4200       |
| Place 7" Dia. Wood Bollards at 15' O.C.      | 22       | Ea   | \$ 61.81   | \$ 1360       |
| Driveway Reconstruction (if required)        | 1        | LS   | \$ 720     | \$ 720        |
| <b>Total Estimate</b>                        |          |      |            | <b>28,605</b> |





## Town of Loxahatchee Groves

### Public Works Department

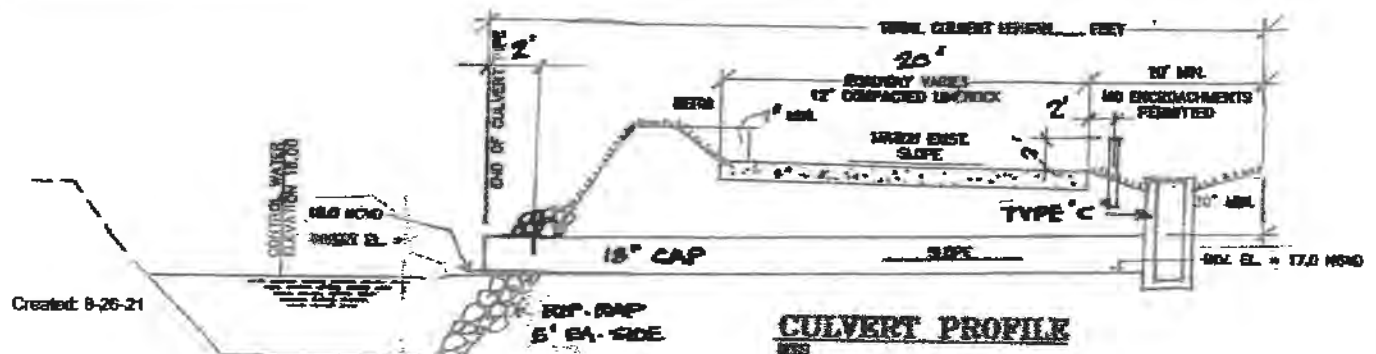
### Bid for Culvert Installation

#### Scope of Work:

Remove and dispose of existing tree stumps along proposed swale. Install two 18" culverts with Type C Inlets, rip-rap and sodded outlets, and connecting swales. Regrade new shell rock driveway as needed.

See below culvert profile, attached typical Type C Inlet and location map.

| Item                                         | Quantity | Unit | Unit Cost | Extension        |
|----------------------------------------------|----------|------|-----------|------------------|
| Mobilization                                 | 1        | LS.  | 5,200.00  | 5,200.00         |
| MOT                                          | 1        | LS.  | 2,520.00  | 2,520.00         |
| Clearing & Grubbing (Tree stumps)            | 9        | Ea.  | 395.00    | 3,555.00         |
| Install Type C Inlet                         | 2        | Ea.  | 6,018.00  | 12,036.00        |
| Install 18" CAP and backfill                 | 2        | Ea.  | 9,875.00  | 19,750.00        |
| Soil Testing                                 | 1        | LS.  | 2,750.00  | 2,750.00         |
| Install 10' Rip rap rubble Canal Embankment  | 2        | Ea.  | 5,580.00  | 11,160.00        |
| Install Sod 5' North and South on Canal Bank | 2        | Ea.  | 1,500.00  | 3,000.00         |
| Construct Swale and Sod                      | 10'x330' | LS.  | 7,200.00  | 7,200.00         |
| Place 7" Dia. Wood Bollards at 15' O.C.      | 22       | Ea.  | 205.00    | 4,510.00         |
| Driveway Reconstruction (if required)        | 1        | LS.  | 1,804.00  | 1,804.00         |
| <b>Total Estimate</b>                        |          |      |           | <b>73,485.00</b> |





155 F Road Loxahatchee Groves, FL 33470

**Agenda Item # 2**

**TO: Town Council of Town of Loxahatchee Groves**  
**FROM: Larry A. Peters, P.E., Director of Public Works**  
**VIA: James Titcomb, Town Manager**  
**DATE: October 5, 2021**  
**SUBJECT: Continuation of OGEM Repair & Overlay Program**

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**Background:**

In February 2021 the Town Council approved Resolution 2021-07 authorizing the use of several vendors for paving and resurfacing under a piggyback agreement based on Wellington awards for annual public works contracts. Of these vendors, Hardrives, Inc. was selected to perform the repair and overlay of multiple OGEM roads including A Road North, C Road North & South, and D Road North & South. Based on Council direction to continue the OGEM repair and overlay program, Hardrives has provided the attached quote for the next major roadway in the program (F Road) totaling \$447, 267.15.

**Recommendation:**

Move to approve a Purchase Order in the amount of \$447, 267.15 to Hardrives, Inc. in continuation of the OGEM Repair & Overlay Program.

● SITEMARK ● ASPHALT PAVING ● ROADWAYS ● PARKING AREAS ● CONCRETE WORK

# HARDRIVES, INC.

2101 SOUTH CONGRESS AVENUE  
DELRAY BEACH, FLORIDA 33445-7398

PHONE 561-278-0456  
FAX 561-278-2147

## QUOTATION

June 11, 2021

Ph: (561) 793-2418

Email: LPeters@loxahatcheeegrovesfl.gov

To: Larry Peters, Public Works Director  
Town of Loxahatchee Groves  
155 F Road  
Loxahatchee Groves, FL 33470

**Name of Project:** F Road

**Location:** Loxahatchee Groves

**Plans and Specifications:** As Described Below

**WE PROPOSE TO FURNISH ALL LABOR & EQUIPMENT TO PERFORM THE FOLLOWING:**

**Pave F Road from just South of Collecting Canal Road to Okeechobee Road from Okeechobee Road to North Road, including 40' East and West on Collecting Canal Road and 40' West at North Road**

|              |                                                      |              |                     |
|--------------|------------------------------------------------------|--------------|---------------------|
| 24,577 SY    | Tack (existing F Road is 18' wide)                   | @ \$ .45/SY  | \$11,059.65         |
| 24,577 SY    | Pave 2" with Type S-1 Asphalt                        | @ \$12.50/SY | \$307,212.50        |
|              | Mill out rough areas and 19 Speed Humps              |              |                     |
|              | Add Milling with 4" finish and Compact               | @ Lump Sum   | \$38,500.00         |
| 12           | Install 12 New Speed Humps                           | @ Lump Sum   | \$17,250.00         |
|              | Striping Double Yellow, 2 Edge Lines and 7 Stop Bars | @ Lump Sum   | \$73,245.00         |
| <b>Total</b> |                                                      |              | <b>\$447,267.15</b> |

### NOTES:

- All permits and fees by others.
- All Maintenance of Traffic Included.
- Hardrives requires a two week notice to mobilize.
- Striping dollars include 1,500' already paved.

*Prices are valid for 30 days.*

**ACCEPTED BY:**

TITLE

**HARDRIVES, INC.**

  
Craig K. Elmore, Vice President

**DATE:**

**HARDRIVES CANNOT GUARANTEE OR BE RESPONSIBLE FOR ROCK BASE WORK CONSTRUCTED BY OTHERS:**

Power steering and fast starts will damage asphalt. We cannot be held responsible after completion of this project. Grass and weeds will grow through asphalt. The control of these is the responsibility of the owner of the property. Buyer's signed acceptance will constitute a binding contract. In the event there is any default in payments due under this contract and the same is placed in the hands of an attorney for collection, the purchaser and/or purchasers agree to pay all cost of collection, including a reasonable attorney's fee.



155 F Road Loxahatchee Groves, FL 33470

**Agenda Item # 3**

**TO: Town Council of the Town of Loxahatchee Groves**

**FROM: Elizabeth V. Lenihan, Town Attorney**

**VIA: James Titcomb, Town Manager**

**DATE: October 5, 2021**

**SUBJECT: Consideration of Ordinance 2021-08 Regarding Qualifying Dates for March 2022 Elections**

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The Palm Beach County Supervisor of Elections (“Supervisor”) has provided notice to all Palm Beach County municipalities whose elections are scheduled in March, including the Town, that they will be required to move their candidate qualifying periods so that all municipal candidate names may be provided to the Supervisor on or before 95 days prior to the municipal election date. Currently, the Town Charter provides that the qualifying period for March elections is in January. This needs to be revised to provide for the qualifying period in November to meet the deadline required by the Supervisor.

Subsection 166.021(4), Florida Statutes, and subsection 100.3605(2), Florida Statutes, allow a municipality to change the dates for qualifying and the dates for the election of members of a governing body by ordinance.

**LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government’s approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government’s action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that arbitrary and capricious or illegal are subject to serious legal challenge.

**RECOMMENDATION**

Move that Town Council approve Ordinance 2021-08 regarding qualifying dates for the March 2022 elections on first reading.

**ORDINANCE NO. 2021-08**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING PARAGRAPH (3)(d) OF SECTION 3 “ELECTION AND TERMS OF OFFICE” OF THE CHARTER TO AMEND THE CANDIDATE QUALIFYING PERIOD; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Loxahatchee Groves, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, in accordance with section 7 of the Town’s Charter, the Town’s general elections are held on the second Tuesday in March of each calendar year; and

**WHEREAS**, the Town’s next municipal election is scheduled to be held on March 8, 2022; and

**WHEREAS**, pursuant to Section 3(3)(d) of the Charter, the qualifying period for the March 2022 election is currently scheduled for 12:00 p.m. on January 4, 2022, through 12:00 p.m. on January 11, 2022; and

**WHEREAS**, the Palm Beach County Supervisor of Elections (the “Supervisor”) has provided notice to all Palm Beach County municipalities whose elections are scheduled for March 8, 2022, that they will be required to move their candidate qualifying periods so that all municipal candidate names may be provided to the Supervisor on or before 95 days prior to the municipal election date; and

**WHEREAS**, subsection 166.021(4), Florida Statutes, and subsection 100.3605(2), Florida Statutes, allows a municipality to change the dates for qualifying and the dates for the election of members of a governing body by ordinance; and

**WHEREAS**, the Town Council wishes to adopt an ordinance setting the Town's candidate qualifying period for municipal elections from 12:00 p.m. on second Tuesday in November through 12:00 p.m. on the fourth Tuesday in November of the year preceding the calendar year in which the election is to be held; and

**WHEREAS**, the Town Council believes that this Ordinance is in the best interest of the Town of Loxahatchee Groves.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing recitals are hereby fully incorporated herein by reference as true and correct and as the legislative findings of the Town Council.

**Section 2:** Paragraph (3)(d) of Section 3. – Election and terms of office of the Charter of the Town of Loxahatchee Groves, is hereby amended to read in its entirety as follows:

(d) *Deadline.* Any resident of the town who wishes to become a candidate for a council member seat shall qualify with the town clerk no sooner than noon on the ~~second~~first Tuesday of ~~November~~January, no later than noon on the ~~third~~second Tuesday in ~~November~~January, of the year preceding the calendar year in which the election is to be held ~~except for those years in which the first Tuesday in January is January 1, and in those years any resident of the town who wishes to become a candidate for a council member seat shall qualify with the town clerk no sooner than noon on the first Wednesday of January, nor later than noon on the second Wednesday in January in those years in which the election is to be held.~~ The names of all candidates shall be received by the supervisor of elections of the county from the town clerk by 5:00 p.m. on the first Monday after the close of qualifying or no later than 5:00 p.m. on the 95th day before the municipal election date.

**Section 3: Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5. Codification.** The sections of the ordinance may be made a part of the Town's Charter and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption at second reading.

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS \_\_ DAY OF \_\_\_\_\_, 2021.**

|                                  | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|----------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCIL MEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCIL MEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

|                                  | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|----------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCIL MEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCIL MEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**TOWN OF LOXAHATCHEE GROVES, FLORIDA**

ATTEST:

\_\_\_\_\_  
Lakisha Q. Burch, Town Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Office of the Town Attorney

\_\_\_\_\_  
Mayor Robert Shorr

\_\_\_\_\_  
Vice Mayor Laura Danowski

\_\_\_\_\_  
Council Member Marge Herzog

\_\_\_\_\_  
Council Member Phillis Maniglia

\_\_\_\_\_  
Council Member Marianne Miles

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155 F Road Loxahatchee Groves, FL 33470

**Agenda Item # 4**

**TO: Town Council of the Town of Loxahatchee Groves**

**FROM: Elizabeth V. Lenihan, Town Attorney**

**VIA: James Titcomb, Town Manager**

**DATE: October 5, 2021**

**SUBJECT: Consideration of Ordinance 2021-09 Regarding Referendum to Remove Election Qualifying Dates from Town Charter**

---

Election qualifying periods are currently set in the Town Charter. The dates change, sometimes based on each election, based on the dates of the election and direction from the Palm Beach County Supervisor of Elections. Subsection 166.021(4), Florida Statutes, and subsection 100.3605(2), Florida Statutes, allow a municipality to change the dates for qualifying and the dates for the election of members of a governing body by ordinance. The Charter Review Committee has recommended removing election qualifying periods from the Town Charter and placing them into the Loxahatchee Groves Code so they may be changed as necessary through the statutorily approved Ordinance process.

**LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that arbitrary and capricious or illegal are subject to serious legal challenge.

**RECOMMENDATION**

Move that Town Council approve **Ordinance 2021-09** regarding referendum to remove election qualifying dates from the Town Charter on first reading.

**ORDINANCE NO. 2021-09**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE TOWN OF LOXAHATCHEE GROVES TO BE HELD ON MARCH 8, 2022, AS TO WHETHER THE TOWN OF LOXAHATCHEE GROVES CHARTER SHALL BE AMENDED IN THE FOLLOWING RESPECT: AMEND PARAGRAPH (3) OF SECTION 3 “ELECTION AND TERMS OF OFFICE” OF THE CHARTER TO PROVIDE THE CANDIDATE QUALIFYING PERIOD BY ORDINANCE; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Loxahatchee Groves, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, subsection 166.021(4), Florida Statutes, and subsection 100.3605(2), Florida Statutes, allow a municipality to change the dates for qualifying and the dates for the election of members of a governing body by ordinance; and

**WHEREAS**, the Town Council has determined that a provision of the Town Charter should be amended; and

**WHEREAS**, the Town Council has further determined that the Town of Loxahatchee Groves electors should determine whether the Town Charter should be amended as provided in this Ordinance; and

**WHEREAS**, it is necessary and essential to call and hold a referendum submitting the issue of whether the Town of Loxahatchee Groves Charter shall be amended as provided in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing recitals are hereby fully incorporated herein by reference as true and correct and as the legislative findings of the Town Council.

**Section 2:** That a referendum is hereby ordered to be held in the Town on the \_\_\_\_ day of \_\_\_\_\_ 2022, to determine whether or not the Town of Loxahatchee Groves Charter shall be amended to amend Paragraph (3) of Section 3. – Election and terms of office to read as follows:

(3) *Qualification.* Candidates for each council seat must qualify for council elections by seat in accordance with applicable general law, and the council members elected to those seats shall hold the seats 1 through 5, respectively. To qualify for office:

(a) *Filing.* Each candidate for council member shall file a written notice of candidacy with the town clerk at such time and in such manner as may be prescribed by ordinance and shall make payment to the town of any fees required by general law as a qualifying fee.

(b) *Registered elector.* Each candidate for council member shall be a registered elector in the state.

(c) *Residency.* Each candidate for council member shall have maintained his or her domicile within the boundaries of the town for a period of 1 year prior to qualifying for election and, if elected, shall maintain such residency throughout his or her term of office.

(d) *Deadline.* Any resident of the town who wishes to become a candidate for a council member seat shall qualify with the town clerk at such time as may be prescribed by ordinance. ~~no sooner than noon on the first Tuesday of January, nor later than noon on the second Tuesday in January, of the year in which the election is to be held except for those years in which the first Tuesday in January is January 1, and in those years any resident of the town who wishes to become a candidate for a council member seat shall qualify with the town clerk no sooner than noon on the first Wednesday of January, nor later than noon on the second Wednesday in January in those years in which the election is to be held.~~

**Section 3:** The form of the ballot for the Charter amendment provided for herein shall be as follows:

#### QUALIFYING DEADLINE FOR CANDIDATES FOR TOWN COUNCIL

The present Charter provides deadline dates by which candidates for Town Council must qualify for office. Town Council has proposed that deadline dates for qualifying be established by ordinance, as provided for in Florida Statutes.

Shall the above described amendment be adopted?

Yes [ ]

No [ ]

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption at second reading.

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS \_\_DAY OF \_\_\_\_, 2021.**

|                                 | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|---------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCILMEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCILMEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

|                                 | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|---------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCILMEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCILMEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**TOWN OF LOXAHATCHEE GROVES, FLORIDA**

ATTEST:

\_\_\_\_\_  
Lakisha Q. Burch, Town Clerk

\_\_\_\_\_  
Mayor Robert Shorr

\_\_\_\_\_  
Vice Mayor Laura Danowski

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Office of the Town Attorney

\_\_\_\_\_  
Councilmember Marge Herzog

\_\_\_\_\_  
Councilmember Phillis Maniglia

\_\_\_\_\_  
Councilmember Marianne Miles

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155 F Road Loxahatchee Groves, FL 33470

**Agenda Item # 5**

**TO: Town Council of the Town of Loxahatchee Groves**

**FROM: Elizabeth V. Lenihan, Town Attorney**

**VIA: James Titcomb, Town Manager**

**DATE: October 5, 2021**

**SUBJECT: Consideration of Ordinance 2021-10 Regarding Qualifying Dates in the Loxahatchee Groves Code**

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Election qualifying periods are currently set in the Town Charter. The dates change, sometimes based on each election, based on the dates of the election and direction from the Palm Beach County Supervisor of Elections. Subsection 166.021(4), Florida Statutes, and subsection 100.3605(2), Florida Statutes, allow a municipality to change the dates for qualifying and the dates for the election of members of a governing body by ordinance. The Charter Review Committee has recommended removing election qualifying periods from the Town Charter and placing them into the Loxahatchee Groves Code so they may be changed as necessary through the statutorily approved Ordinance process. Town Council has approved **Ordinance 2021-10** authorizing a referendum of the electors on **March 8, 2022**, for this purpose. This Ordinance will become effective upon approval of that referendum.

**LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that arbitrary and capricious or illegal are subject to serious legal challenge.

**RECOMMENDATION**

Move that Town Council approve **Ordinance 2021-10** regarding adding election qualifying dates to the Loxahatchee Groves Code on first reading.

**ORDINANCE NO. 2021-10**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION”, ARTICLE II “TOWN COUNCIL” BY ADDING A NEW SECTION 2-20 “ELECTION QUALIFYING” OF THE LOXAHATCHEE GROVES CODE PROVIDING FOR THE CANDIDATE QUALIFYING PERIOD; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Loxahatchee Groves, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, in accordance with section 7 of the Town Charter, the Town’s general elections are held on the second Tuesday in March of each calendar year; and

**WHEREAS**, the Palm Beach County Supervisor of Elections (the “Supervisor”) has provided notice to all Palm Beach County municipalities whose elections are scheduled in March, that they will be required to move their candidate qualifying periods so that all municipal candidate names may be provided to the Supervisor on or before 95 days prior to the municipal election date; and

**WHEREAS**, subsection 166.021(4), Florida Statutes, and subsection 100.3605(2), Florida Statutes, allows a municipality to change the dates for qualifying and the dates for the election of members of a governing body by ordinance; and

**WHEREAS**, at the Town’s next municipal election, scheduled to be held on March 8, 2022, the electors will consider a referendum question to remove the election qualifying period from the Town Charter and move it to the Loxahatchee Groves Code; and

**WHEREAS**, the Town Council wishes to adopt an ordinance setting the Town’s candidate qualifying period for municipal elections from 12:00 p.m. on second Tuesday in

November through 12:00 p.m. on the fourth Tuesday in November of the year preceding the calendar year in which the election is to be held, effective upon approval of the referendum question by the electors removing the qualifying period from the Town Charter; and

**WHEREAS**, the Town Council believes that this Ordinance is in the best interest of the Town of Loxahatchee Groves.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing recitals are hereby fully incorporated herein by reference as true and correct and as the legislative findings of the Town Council.

**Section 2:** Chapter 2 “Administration”, Article II “Town Council” is hereby amended by adding thereto a new Section 2-20 “Election Qualifying” to read as follows:

**Sec. 2-20. – Election qualifying.**

Any resident of the town who wishes to become a candidate for a council member seat shall qualify with the town clerk no sooner than noon on the second Tuesday of November, no later than noon on the third Tuesday in November, of the year preceding the calendar year in which the election is to be held. The names of all candidates shall be received by the supervisor of elections of the county from the town clerk by 5:00 p.m. on the first Monday after the close of qualifying or no later than 5:00 p.m. on the 95th day before the municipal election date.

**Section 3: Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5. Codification.** The sections of the ordinance may be made a part of the Town’s Charter and may be re-numbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section”, “division”, or any other appropriate word.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon approval by the electors of the referendum to be held \_\_\_\_\_ removing the qualifying period from the Town Charter.

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS \_\_DAY OF \_\_\_\_\_, 2021.**

|                                  | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|----------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCIL MEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCIL MEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCIL MEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

|                                  | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|----------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCIL MEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCIL MEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCIL MEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**TOWN OF LOXAHATCHEE GROVES, FLORIDA**

ATTEST:

\_\_\_\_\_  
Lakisha Q. Burch, Town Clerk

\_\_\_\_\_  
Mayor Robert Shorr

\_\_\_\_\_  
Vice Mayor Laura Danowski

APPROVED AS TO LEGAL FORM:

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Office of the Town Attorney

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Council Member Marge Herzog

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Council Member Phillis Maniglia

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Council Member Marianne Miles

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155 F Road Loxahatchee Groves, FL 33470

**Agenda Item # 6**

**TO: Town Council of the Town of Loxahatchee Groves**

**FROM: Elizabeth V. Lenihan, Town Attorney**

**VIA: James Titcomb, Town Manager**

**DATE: October 5, 2021**

**SUBJECT: Consideration of Ordinance 2021-11 Regarding Referendum to Amend Signature Requirements in Town Charter**

---

The Charter Review Committee has recommended the Town Charter be amended to provide for signature on ordinances and resolutions be completed by the mayor instead of all council members. This change is legally sufficient and would create efficiencies in finalization of these important Town documents.

**LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that arbitrary and capricious or illegal are subject to serious legal challenge.

**RECOMMENDATION**

Move that Town Council approve ***Ordinance 2021-11*** regarding referendum to amend signature requirements in the Town Charter on first reading.

**ORDINANCE NO. 2021-11**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE TOWN OF LOXAHATCHEE GROVES TO BE HELD ON MARCH 8, 2022, AS TO WHETHER THE TOWN OF LOXAHATCHEE GROVES CHARTER SHALL BE AMENDED IN THE FOLLOWING RESPECT: AMEND PARAGRAPH (12) OF SECTION 5 “LEGISLATIVE” OF THE CHARTER TO PROVIDE FOR SIGNATURE AUTHORITY BY THE MAYOR; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Loxahatchee Groves, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, Section 2 of the Town Charter provides that the Mayor shall be recognized as the head of town government for signature or execution of documents, that in the absence of the mayor the vice mayor shall serve as acting mayor; and

**WHEREAS**, Paragraph (12) of Section 5 of the Town Charter provides that all council members must sign ordinances and resolutions; and

**WHEREAS**, the Town Council has determined that a provision of the Town Charter should be amended; and

**WHEREAS**, the Town Council has further determined that the Town of Loxahatchee Groves electors should determine whether the Town Charter should be amended as provided in this Ordinance; and

**WHEREAS**, it is necessary and essential to call and hold a referendum submitting the issue of whether the Town of Loxahatchee Groves Charter shall be amended as provided in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE  
TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing recitals are hereby fully incorporated herein by reference as true and correct and as the legislative findings of the Town Council.

**Section 2:** That a referendum is hereby ordered to be held in the Town on the **8<sup>th</sup>** day of **March** 2022, to determine whether or not the Town of Loxahatchee Groves Charter shall be amended to amend Paragraph (12) of Section 5. – Legislative to read as follows:

(12) *Recordkeeping.* The council shall, in a properly indexed book kept for the purpose, provide for the authentication and recording in full of all minutes of meetings and all ordinances and resolutions adopted by the council, and the same shall at all times be a public record. The council shall further maintain a current codification of all ordinances. Such codification shall be printed and shall be made available for distribution to the public on a continuing basis. All ordinances or resolutions of the council shall be signed by ~~all council members~~ the mayor and attested to by the town clerk.

**Section 3:** The form of the ballot for the Charter amendment provided for herein shall be as follows:

**EXECUTION OF DOCUMENTS APPROVED BY TOWN COUNCIL**

The present Charter provides all council members must sign ordinances and resolutions approved by Town Council. Town Council has proposed that signature by the mayor instead of all council members on ordinances and resolutions be recognized as sufficient and more efficient.

Shall the above described amendment be adopted?

Yes [ ]

No [ ]

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences,

clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption at second reading.

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS \_\_ DAY OF \_\_\_\_\_, 2021.**

|                                 | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|---------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCILMEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCILMEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

|                                 | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|---------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCILMEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCILMEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**TOWN OF LOXAHATCHEE GROVES, FLORIDA**

ATTEST:

\_\_\_\_\_  
Lakisha Q. Burch, Town Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Office of the Town Attorney

\_\_\_\_\_  
Mayor Robert Shorr

\_\_\_\_\_  
Vice Mayor Laura Danowski

\_\_\_\_\_  
Councilmember Marge Herzog

\_\_\_\_\_  
Councilmember Phillis Maniglia

\_\_\_\_\_  
Councilmember Marianne Miles

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155 F Road Loxahatchee Groves, FL 33470

**Agenda Item # 7**

**TO: Town Council of the Town of Loxahatchee Groves**

**FROM: Elizabeth V. Lenihan, Town Attorney**

**VIA: James Titcomb, Town Manager**

**DATE: October 5, 2021**

**SUBJECT: Consideration of Ordinance 2021-12 Regarding Referendum to Amend  
Canvassing Board in Town Charter**

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The Palm Beach County Supervisor of Elections (“Supervisor”) has notified the Town that the Supervisor will no longer participate as a member of the Canvassing Board for each municipality. The Supervisor has offered to have municipalities designate the Supervisor as the official Supervisor of the uniform municipal elections for the municipality, which allows the Supervisor to establish a single Canvassing Board for all the elections. If the Town does not make this change, the Town will have a separate Canvassing Board made up of the Town Clerk and two other members (but not the Supervisor) and the Town Clerk will certify all the election results. The Charter Review Committee has recommended this change.

**LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government’s approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government’s action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that arbitrary and capricious or illegal are subject to serious legal challenge.

**RECOMMENDATION**

Move that Town Council approve **Ordinance 2021-12** regarding referendum to amend the Canvassing Board in the Town Charter on first reading.

**ORDINANCE NO. 2021-12**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE TOWN OF LOXAHATCHEE GROVES TO BE HELD ON MARCH 8, 2022, AS TO WHETHER THE TOWN OF LOXAHATCHEE GROVES CHARTER SHALL BE AMENDED IN THE FOLLOWING RESPECT: AMEND PARAGRAPH (5) OF SECTION 7 “ELECTIONS” OF THE CHARTER FOR THE CANVASSING BOARD TO BE DETERMINED BY THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Loxahatchee Groves, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Town Council has determined that a provision of the Town Charter should be amended; and

**WHEREAS**, the Town Council has further determined that the Town of Loxahatchee Groves electors should determine whether the Town Charter should be amended as provided in this Ordinance; and

**WHEREAS**, it is necessary and essential to call and hold a referendum submitting the issue of whether the Town of Loxahatchee Groves Charter shall be amended as provided in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing recitals are hereby fully incorporated herein by reference as true and correct and as the legislative findings of the Town Council.

**Section 2:** That a referendum is hereby ordered to be held in the Town on the \_\_\_\_ day of \_\_\_\_\_ 2022, to determine whether or not the Town of Loxahatchee Groves Charter shall be amended to amend Paragraph (5) of Section 7. – Elections to read as follows:

(5) *Town canvassing board.* The town canvassing board shall be composed as determined by the Palm Beach County Supervisor of Elections, who is designated as the official Supervisor of each Uniform Municipal Election for the Town. ~~of three members: the Town Clerk, and two members appointed by the Town Council by Resolution. No member of the town canvassing board shall be an active participant in the town election for which he or she is canvassing as the term "active participant" is interpreted by the Florida Department of Elections. Where possible, the members of the town canvassing board shall be experienced as a judge or in the administration of elections. Should a vacancy occur on the canvassing board, the Town Council shall appoint a replacement member by resolution.~~ The Town Canvassing Board shall canvass the election consistent with the requirements of Florida law and consistent with and pursuant to any agreement between the Town and the Palm Beach County Supervisor of Elections. The canvassing board shall certify the results of the election upon receipt of the certification from the Supervisor of Elections.

**Section 3:** The form of the ballot for the Charter amendment provided for herein shall be as follows:

#### CANVASSING BOARD FOR ELECTIONS

The present Charter provides for a Town canvassing board. Town Council has proposed that the Palm Beach County Supervisor of Elections be designated as the official Supervisor for Uniform Municipal Elections for the Town, allowing for a single canvassing board for all municipal elections in the County.

Shall the above described amendment be adopted?

Yes [ ]

No [ ]

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences,

clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption at second reading.

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

|                                 | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|---------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCILMEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCILMEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Council Member \_\_\_\_\_ offered the foregoing ordinance. Council Member \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

|                                 | <u>Aye</u>               | <u>Nay</u>               | <u>Absent</u>            |
|---------------------------------|--------------------------|--------------------------|--------------------------|
| ROBERT SHORR, MAYOR             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LAURA DANOWSKI, VICE MAYOR      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARGE HERZOG, COUNCILMEMBER     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PHILLIS MANIGLIA, COUNCILMEMBER | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MARIANNE MILES, COUNCILMEMBER   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**TOWN OF LOXAHATCHEE GROVES, FLORIDA**

ATTEST:

\_\_\_\_\_  
Lakisha Q. Burch, Town Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Office of the Town Attorney

\_\_\_\_\_  
Mayor Robert Shorr

\_\_\_\_\_  
Vice Mayor Laura Danowski

\_\_\_\_\_  
Councilmember Marge Herzog

\_\_\_\_\_  
Councilmember Phillis Maniglia

\_\_\_\_\_  
Councilmember Marianne Miles