# REPORT OF INVESTIGATION

Complaint Number 19-180

NOTICE CONCERNING CONFIDENTIALITY

This report of investigation concerns an alleged violation of Chapter 112, Part III, Florida Statutes, or other breach of public trust under provisions of Article II, Section 8, Florida Constitution. The Report and any exhibits may be confidential (exempt from the public records law) pursuant to Section 112.324, Florida Statutes, and Chapter 34-5, F.A.C., the rules of the Commission on Ethics. Unless the Respondent has waived the confidentiality in writing, this report will remain confidential until one of the following occurs: (1) the complaint is dismissed by the Commission; (2) the Commission finds sufficient evidence to order a public hearing; or (3) the Commission orders a public report as a final disposition of the matter.

STATE OF FLORIDA
COMMISSION ON ETHICS
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

# REPORT OF INVESTIGATION

TITLE: KEITH JAMES
Mayor
West Palm Beach, Florida

COMPLAINT NO.: 19-180
Exhibits A through E

INVESTIGATED BY: Kathleen Mann

Distribution: Commission on Ethics
Respondent
Advocate
File

Releasing Authority: C. Christopher Anderson, III
Executive Director

March 16, 2020
Date

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**REPORT OF INVESTIGATION**
**COMPLAINT NO. 19-180**

(1) The Complainant, Adam Giddens, of Jacksonville, alleges that the Respondent, Keith James, who serves as Mayor of West Palm Beach (the City), used his official position to cancel the City's bidding process regarding contracts for the provision of security guard services, and, without re-opening the bidding process, furthered a no-bid contract for a security company where his friend is employed as the Senior Regional Director.

(2) The Executive Director of the Commission on Ethics noted that based upon the information provided in the complaint, the above-referenced allegations were sufficient to warrant a preliminary investigation to determine whether the Respondent's actions violated Section 112.313(6), Florida Statutes (Misuse of Public Position).

(3) The Complainant contends that his company, Giddens Security Corporation (Giddens), was the incumbent provider of security services to the City prior to and during the time the Respondent was elected and assumed office. The Complainant alleges that the Respondent, weeks after he was elected, cancelled two Requests for Proposal (RFP) by the City (RFP No. 18-19-207 and RFP No. 18-19-208). These RFPs had been issued to solicit bids for security guard services and roving security ambassador services to City facilities and other areas. The Complainant also alleges that the Respondent subsequently recommended that City Commission members vote to waive the City's procurement process and award a no-bid contract worth approximately $7.9 million to Professional Security Consultants (PSC), a company whose Senior Regional Director, Wilfredo Perez-Borroto (Willie Perez), is a personal friend of the Respondent.

(4) The Complainant stated that his company's contract, providing security services to the City,[1] was obtained in 2016, and was extended by the City several times, most recently operating on a month-to-month contract at the time the RFPs were cancelled without explanation. He alleges that following the cancellation of RFPs, his company, and approximately 12 other proposers, were awaiting the City to re-issue a solicitation for security guard services. The Complainant alleges he received notice in August 2019 that his company's contract with the City would effectively terminate on September 30, 2019. He claims that when the City Commission (Commission) subsequently voted in favor of awarding a no-bid contract to PSC on September 9, 2019, it bypassed, at the Respondent's behest, the City's Charter requirement that contracts be competitively procured.

(5) Under former Mayor Jeri Muoio, the City had issued two solicitations, on March 8, 2019, and March 22, 2019, RFP No. 18-19-208 (Roving Security Ambassador Services), and

[1] Giddens provided security guard services to the following areas in the City: "City Hall, the Mandel Public Library of West Palm Beach, the Water Treatment Plant, City Parking garages and lots, the Youth Empowerment Center and area facilities, and such other facilities and events as may be requested from time to time."

RFP No. 18-19-207 (Unarmed Security Guard Services), respectively. Both were advertised in the Palm Beach Post and on the City's website.[2]

(6) According to City Procurement Director Frank Hayden, RFP No. 18-19-208 sought "unarmed roving security ambassador services for the special events/community events services, Currie Park, and the Northwood Village CRA District." Proposals were due by April 4, 2019. According to Mr. Hayden, RFP No. 18-19-207 sought "security companies to provide professional unarmed security guard services at City Hall, Mandel Public Library of West Palm Beach, various locations and departments, and any other agencies and entities that [the] City provides services for [collectively, the 'City']." Proposals were due by April 17, 2019.

(7) The City's website reflects that on April 4, 2019, the Respondent took office as the newly elected Mayor and Chief Executive Officer of the City. Prior to being elected to a four-year term, the Respondent had served as a City Commissioner since 2011.

(8) On April 15, 2019, Procurement Director Hayden sent a letter via email from the City Purchasing Department to PSC (one of the proposers on RFP No. 18-19-208), stating they were "disqualified from the award process." The letter stated that PSC, along with five other proposers, failed to meet one of the minimum requirements to submit a proposal, namely, "Item No. 9," a minimum small business goal of 15 percent.[3]

(9) On April 18, 2019, Mr. Hayden sent a letter via email to "All Proposers." The letter stated that the City was cancelling RFP Nos. 18-19-207 and 19-19-208. The letter further stated "the City hereby provides notice that it intends to re-issue the solicitation in [the] near future."

(10) On July 22, 2019, City Senior Purchasing Agent Josephine Grosch emailed PSC Senior Vice President Shaul Maouda and PSC Regional Director Willie Perez regarding the "Possibility of Piggyback of Other FL Government Agencies." In her email, Ms. Grosch copied Procurement Director Hayden and Nathaniel Rubel, the City Procurement Supervisor. She inquired in the email whether PSC had current security services agreements with any governmental agencies in the State other than the Delray Beach Downtown Development Authority and the West Palm Beach Downtown Development Authority.

(11) The July email communication further indicated that Ms. Grosch was interested in knowing which government agency had most recently signed a security services contract with PSC, awarded through competitive selection, and which had at least three years term remaining. PSC Administrative Assistant Katie Sears emailed Ms. Grosch citing an active contract with the Pompano Beach Northwest Community Redevelopment Agency that matched the criteria Ms. Grosch requested.

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[2] Report of Investigation, paragraphs 5 through 22, provide a general overview of how the security contract with PSC was approved.

[3] However, PSC was not disqualified from RFP No. 18-19-207.

(12) Ms. Grosch subsequently emailed Ms. Sears, requesting a copy of the Pompano Beach Northwest Community Redevelopment Agency's contract with PSC, and a copy of the RFP. Ms. Grosch confirmed with Ms. Sears that the contract was signed on June 25, 2019, and had been awarded competitively, and she stated, "The City of West Palm Beach is looking for available and competitive[ly] selected contract[s] that we can piggyback to use PSC's security services."

(13) On August 9, 2019, Ms. Grosch reached out via email to PSC's Mr. Perez, stating the City would like to meet with PSC to discuss the possibility of a piggyback with the Downtown Development Authority (DDA) contract.[4]

(14) City email and United States Postal Service certified mail reflect that on August 26, 2019, Mr. Hayden terminated all agreements with Giddens Security Corporation, effective September 30, 2019. Deputy City Attorney Nancy Urcheck and City Administrator Jeff Green were copied on the correspondence.

(15) On September 6, 2019, a City Commission Agenda Review meeting was held, wherein item number six listed for approval on the consent calendar was:

> "Resolution No. 290-19, APPROVING A SECURITY SERVICES AGREEMENT WITH PROFESSIONAL SECURITY CORPORATION TO PROVIDE SECURITY SERVICES FOR CITY FACILITIES AND ROVING SERVICES IN NORTHWOOD; WAIVING THE PROCUREMENT REQUIREMENTS PURSUANT TO SECTION 66-94 OF THE CITY CODE OF ORDINANCES."

(16) City Commissioner Cory Neering asked that the Resolution be moved from the consent agenda for a presentation at the September 9, 2019, regular City Commission Meeting.

(17) On September 9, 2019, prior to the City Commission meeting, City Attorney Kimberly Rothenburg received a letter via email from Corinne Porcher, the attorney for Giddens, concerning Resolution No. 290-19 on the City Commission Consent Agenda. The letter, copied to all City Commissioners, requested that the City conduct an internal investigation or audit into the procurement process that effectuated the current direction being taken by the City regarding security services, and delay consideration of the Resolution for two weeks.

(18) On September 9, 2019, prior to the City Commission meeting, Ms. Rothenburg forwarded the letter from Ms. Porcher to Deputy City Attorney Urcheck and City Administrator Green.

(19) The September 9, 2019, City Commission meeting minutes[5] reflect that, after a PowerPoint "Benchmark Study" presented by Mr. Hayden regarding security services, and

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[4] According to City Administration, the DDA is a separate governmental agency. It is unclear in the email whether Ms. Grosch was referring to the City's DDA or the Delray Beach DDA.

following extensive discussion and public comments, City Commissioners voted unanimously to approve Resolution No. 290-19 which, "grants a waiver of the Procurement Code requirements and approves a Security Services Agreement with Professional Security Consultants for a term of three years, with an option to extend for an additional two years." The Respondent did not vote on the Resolution, however, he spoke in favor of awarding the contract to PSC, and recommended that the Commissioners vote to approve the Resolution.

(20) On September 19, 2019, Ms. Rothenburg informed Mr. Perez via certified mail and email that Giddens had filed legal action against the City. She advised him that although the Agreement with PSC was intended to be effective on October 1, 2019, there was a possibility of the Agreement being cancelled pursuant to City Code. Ms. Rothenburg copied City Administrator Green on the email.

(21) On September 20, 2019, Mr. Hayden authored a "Single Source Justification City-Wide Security Services" letter attempting to explain why the security contract was not competitively bid.[6] It stated that he had received information and justification from various "City departments" regarding the requirements for security services and the need for a single source selection (whereby the City would award a contract to a proposed single source, rather than selecting a provider from a competitive bidding process), in accordance with City Code Section 66-64.[7] Mr. Hayden stated that there was no written documentation containing information and justification from these various City departments, and that all of the information he received was through verbal communication from any and all departments within the City that utilized security services. Mr. Hayden presented his letter to current City Administrator Faye Johnson after the City Commission voted to approve Resolution No. 290-19. The letter stated, retrospectively, "Based on my single source determination, and in accordance with the Code, the City could have executed the contract with PSC without further approvals. However, in the interest of transparency, it was determined to take the contract to the City Commission for approval, and the use of Section 66-94[8] was the means to bring the contract to the Commission for approval. Accordingly, at that time I did not reduce my single source finding to writing since Commission approval was sought."

(22) On December 2, 2019, a new RFP (No. 19-20-203) for security guard services was published to the City website.

(23) Former City Administrator Jeff Green averred that in or around February 2019, City security contracts were up for renewal at the conclusion of Mayor Muoio's term, and City administration commenced discussions regarding a new solicitation for security services.

(24) Mr. Green stated that the Respondent appointed a new police chief after he became Mayor in April, 2019, and that he and the Respondent agreed to allow the chief to evaluate the

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[5] City Commission meeting minutes pertaining to Resolution No. 290-19 are attached as composite Exhibit A.
[6] Mr. Hayden's "Single Source Justification" letter is attached as Exhibit B.
[7] City Code Sec. 66-64 is attached as Exhibit C.
[8] City Code Sec. 66-94 is attached as Exhibit D.

security guard services process for the City. Mr. Green recalled that he directed Mr. Hayden to cancel the RFPs that were issued under Mayor Muoio. Mr. Green said the City was not satisfied with the performance of Giddens at the time due to complaints received from the Northwood area of the City. Mr. Green opined that the City was also displeased because security guard services were split throughout the City, causing problems and inconveniences, as one security firm provided services downtown, another firm provided services to City Plaza, and still another firm provided security to other areas of the City. He said it was confusing to the residents, the City, and the police. Mr. Green cited one example, stating that individuals inside a City garage who were in need of assistance would call the security company who patrolled the garage, although, if they still required assistance upon exiting the garage, it would necessitate contacting a different security company for help. None of the issues regarding splintered services, Green stated, were addressed in the original RFPs that went out for bid under the Respondent's predecessor. Mr. Green further stated that, in consultation with the new police chief, the deputy police chief, and the Respondent, he concluded it was best for the City to have one security firm oversee all areas of the City.

(25) Mr. Green explained that security services for the downtown area of the City is handled by the West Palm Beach DDA, (Downtown Development Authority), a separate legal entity, and the DDA had an active contract with PSC at the time the City was interested in restructuring security services. Mr. Green said there had been some discussion about amending the scope of work on the original RFPs to include the entire City. However, at the time, separate security contracts were already in force between PSC and the DDA, and between PSC and City Place (a private entity). Mr. Green opined it would be underhanded to modify an existing RFP or issue a new RFP whereby the requirements would be written so narrowly that only "one firm" would be qualified to win the award by virtue of its existing contracts with neighboring entities. Mr. Green said that in order to be "above board," he decided, in consultation with his legal and procurement staff, that the best approach was to present a single source contract to the Commission, and not place the contract out for bid. Mr. Green asserted that it was ultimately his decision on how to proceed, adding his hope was to have one contract with a term mirroring the remaining time on the DDA contract, and in three years, upon the expiration of the DDA contract, all of the entities would work together to reach comprehensive and uniform City-wide security services.

(26) Mr. Green avowed that he did not cancel the RFPs because PSC had been disqualified during the original procurement process. Rather, Mr. Green maintained, that in seeking cohesive security services throughout the City with a single firm, and to facilitate a seamless transition of security services from the parking garage into the street, the RFPs were cancelled. He added that, it was not cost effective to double-down with multiple contracts, which would result in two security firms patrolling the downtown area simultaneously.

(27) Mr. Green claimed that the Respondent was involved in all discussions and meetings related to security guard services from the very beginning. Mr. Green said at no time did anyone from City Procurement or Legal advise him that the no-bid process was unlawful. Mr. Green said that Mr. Hayden was not happy with the use of a single source determination, and, at some point during discussions, prior to the cancellation of the RFPs, he said Mr. Hayden

suggested modifying the scope of work on the original RFPs, so as to include the entire City, although this modification did not occur.

(28) Mr. Green acknowledged his friendship with the Respondent, and with PSC's Mr. Perez, and said they frequently socialize together outside of work. Mr. Green denied being influenced, pressured, or coerced by the Respondent to award a no-bid contract to PSC. Mr. Green denied being involved with the Respondent in any scheme or plan to award a contract to PSC in return for a percentage of Mr. Perez's commission, or any other special benefit, favor, or compensation. Mr. Green stated he resigned from his City Administrator position, in October of 2019, amid the allegations contained in this instant complaint and amid another unrelated controversy.

(29) Mr. Hayden averred that he has been with the City since 2013 and has almost 50 years of experience in procurement. He recalled that during the time between the cancellation of the two original RFPs (April 2019) and the vote to award a single source contract to PSC, City Procurement conducted research and performed its due diligence to arrive at what he determined was the overall "best value," based on competitive rates and the City's need for a vendor who could provide a cohesive City-wide security presence. Mr. Hayden said that his team's research was presented during the September 9, 2019, Commission meeting. Mr. Hayden said, that when he looked at the services the City required, and what was being provided, he recommended the City Commission approve a proposed no-bid, non-competitive contract with PSC.

(30) Mr. Hayden denied being pressured or unduly influenced by the Respondent, or anyone else, to make a presentation in favor of a no-bid award to PSC. Mr. Hayden substantiated that he was instructed by Mr. Green to cancel the original two RFPs for security guard services. Mr. Hayden maintained that he never made a recommendation to Mr. Green against entering into a single source contract.

(31) Current City Administrator Faye Johnson stated that she became the Interim City Administrator on October 9, 2019, and prior to that served as one of five Assistant City Administrators. Ms. Johnson said that the current no-bid contract awarded to PSC has not been terminated, and it was active when the City issued a new solicitation (RFP No. 19-20-203) for security guard services in December 2019. She advised that, in her position as the new City Administrator, she reviewed the City's procurement code, specifically the section regarding a single source contract. She asserted that Mr. Hayden provided justification for the single source contract after the City Commission had already voted to award it. She said she viewed this as problematic. From a staff perspective, Ms. Johnson said, the justification letter for determining the need for a single source contract should have been provided by City departments/staff prior to a vote on the Resolution, rather than after it was approved.

(32) Ms. Johnson recalled that after the Resolution was passed, she met with Mr. Hayden and Ms. Rothenburg, and they apprised her of the discussions they had with Mr. Green. Ms. Johnson stated that Mr. Hayden and Ms. Rothenburg had advised Mr. Green that although City Code made it permissible for the City to issue a single source contract, they did not feel it

was the direction the City should take. However, she said, then-City Administrator Green had already made up his mind to proceed with a no-bid contract.

(33) Ms. Johnson remembered that she met with the Respondent after the contract had been awarded to PSC. She recalled telling the Respondent that, based on her experience, the timing of Mr. Hayden's justification letter, and the dollar threshold of the PSC award compared to other recent no-bid contracts the City had issued, she believed it was inappropriate to circumvent the open competitive bid process and award a no-bid contract to PSC. She also maintained that, after having served in other high-level administrative positions with other municipalities in the State, it was important to her to understand the City's "practice" regarding procurement, in the absence of any detailed policy or code. She said other no-bid contracts the City awarded in 2019 were nowhere near the dollar threshold of PSC's contract.[9]

(34) City Commissioner Cory Neering attested that he objected to having Resolution No. 290-19 on the September 6, 2019, consent calendar. He confirmed that he asked that the item be pulled from the consent agenda and presented for a vote at the September 9, 2019, Commission meeting. He stated that, based on his five years of experience as a Commissioner, he found it unusual that a multi-million dollar contract would be approved as a consent agenda item. Mr. Neering said he voted in favor of the Resolution because Ms. Rothenburg and Mr. Hayden did not express any reservations during the Commission meeting. If he had been aware the Respondent and Mr. Perez were friends, he said he would have been much more scrutinizing. He said the contract went through an abnormal process and he regrets voting in favor of the Resolution. He also stated that some of the business reasons presented in favor of a single source contract were legitimate.

(35) City Attorney Kimberly Rothenburg stated that City Code Section 66-94 Subsection (A)(3), allowed the Commission to pass Resolution No. 290-19 as a vote, without going through the enumerated procurement processes. Ms. Rothenburg stated that after she received a letter from Giddens' lawyers concerning the no-bid award process and threatening legal action, she advised Mr. Green that it was permissible to bring a single source contract before the Commission for a vote. However, she said she advised him it was also an option to put the contract back out to bid in an expedited process. Initially, Ms. Rothenburg said she could not recall if she specifically recommended a new solicitation. Upon further reflection, she said, in light of the pending litigation, she may have told Mr. Green he should put the contract out for bid. She stated that during the September 9, 2019, Commission meeting she advised Commissioners on the law relative to issuing a single source contract, and answered any questions regarding legal ramifications should the Commission award a no-bid contract to PSC. Ms. Rothenburg asserted that if the Commission is following a process that is legally sufficient, she believed it was not her place to give her opinion on how to proceed. She stated that she was not aware of the extent of the friendship between the Respondent, Mr. Green, and

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[9] A list of other no-bid contracts the City awarded in 2019 is attached as Exhibit E. Note that on this chart the contract amount for PSC is listed as $4,751,277.30. This amount only reflects a term of three years. The contract has an option to extend for an additional two years, bringing the potential value of the contract to $7.9 million.

Mr. Perez. She added that she had no contact with Mr. Perez relating to the PSC contract with the City.

(36) Mr. Perez averred that, as Senior Regional Director for PSC, he is involved in the operations and management of the company. PSC, he said, has approximately 37 contracts in West Palm Beach and Broward County. He stated he is a salaried employee, and receives a quarterly commission, which is one percent (1%) of each individual contract PSC is awarded. He said he also receives an annual bonus based on his performance. He acknowledged that he is personal friends with the Respondent and has known him for approximately eight years.

(37) PSC Senior Vice President Shaul Maouda verified in an email that Mr. Perez receives a one percent (1%) quarterly commission from each contract he acquires for PSC, and such commission is valid for the life of the contract, contingent upon the client's payment of invoices. Additionally, Mr. Maouda wrote that Mr. Perez receives an annual bonus "based on his and the account performance/profitability."

(38) Mr. Perez denied discussing any active RFPs for security guard services with Mr. Green or the Respondent. Mr. Perez maintained that neither he nor the Respondent ever reached out to one another to discuss, formulate a deal, or further an agreement that would afford the Respondent monetary compensation, something of value, or any other type of special benefit or favor, in exchange for awarding PSC a City-wide security guard services contract.

(39) The Respondent contends that he was familiar with the work PSC had accomplished over the years in Rosemary Square (formerly known as City Place), and for the DDA. He believed that PSC was very experienced and knowledgeable regarding the City, and was uniquely qualified as it had existing contracts in place for certain areas within the City. The Respondent related how important it was to have police and security guard services that work well together. He explained that he desired a single provider of security services throughout the City, considering that, during his campaign, he promised to have security ambassadors working throughout the City to combat the City's homeless situation. He asserted that he made "no bones" about the fact that he wanted PSC to have the contract for security guard services.

(40) The Respondent confirmed that Mr. Green was responsible for cancelling the original two RFPs for security guard services. He further stated that Mr. Green also handled the details of placing the Resolution on the consent agenda.

(41) The Respondent stated that Mr. Green came to him, informing him that procurement and legal were "on board" with preparing a no-bid contract. He said the advice from legal at the time was that a non-competitive, single source award was legal to execute under the City's Charter, but would require Commission approval. The Respondent stated that, at the time, he did not know that legal had also counseled Mr. Green against executing a single source contract. The Respondent contended that the input communicated to Mr. Green, advising him that issuing a no-bid contract could be done, but probably should not be done, was never conveyed to him. Contrary to what Mr. Green said, the Respondent denied playing an active

role in the discussions regarding security guard services, and stated he never communicated directly with Ms. Rothenburg, as Mr. Green served as the intermediary between himself and Ms. Rothenburg.

(42) The Respondent stated that at the time the original RFPs were cancelled, he was a newly elected Mayor and had just made the decision to change police chiefs. The Respondent further stated that he believed PSC was right for the job, and he was willing to take the "political heat" for awarding them a contract on a non-competitive basis. He admitted he acted "stubborn" on the matter because PSC would be able to provide everything necessary for the City to have a public safety infrastructure that was working. The Respondent stated his pitch to the Commissioners promised that the single source contract would provide for a more comprehensive approach to public safety.

(43) The Respondent said that he did not extend any invitations, nor exert any pressure, on City staff to come and speak during the September City Commission meeting in support of awarding a no-bid contract to PSC. He maintained that the Resolution underwent a process in which a Commission vote was taken on the matter, and that the entire process was legal and consistent with the City Charter. The Respondent related that, initially, he thought there would be no objection to the Resolution being placed on the consent agenda, and asserted it was not placed there to avoid scrutiny. He explained that Commissioners have the opportunity to review consent items and remove any item from the agenda.

(44) The Respondent confirmed his meeting with then-interim City Administrator Johnson, following the September 9, 2019, City Commission meeting. The Respondent said Ms. Johnson informed him that Ms. Rothenburg and Mr. Hayden had both advised Mr. Green against taking steps to award a no-bid contract. At the time the Resolution was scheduled to go before the Commission, the Respondent said he was unaware of this, and presumed Ms. Rothenburg and Mr. Hayden were both in agreement with executing a single source contract since no one informed him otherwise.

(45) The Respondent confirmed that he is friends with Mr. Perez, but denied any bias or favoritism towards PSC. The Respondent said he has known Mr. Perez for approximately nine years, and that they socialize a couple of times per month. He denied reaching out to, unduly influencing, coercing, or pressuring City staff to support a non-competitive award to PSC. The Respondent denied having any type of arrangement or deal with Mr. Perez, or Mr. Green, wherein, in exchange for the City awarding PSC the contract, Mr. Perez would compensate him with a portion of his earned commission or with some special benefit.

(46) The Respondent said he knew taking the non-competitive option to award the contract was risky, adding that, if he had known there had been advisement against it, he would not have moved forward. He explained that, as a newly elected Mayor, he would have never gone against the advice of the City Attorney or the City's Procurement office. The Respondent stated that a new RFP for security guard services is currently advertised. However, PSC is currently operating under the newly awarded single source contract and that contract had not been terminated, as he did not want to leave the City without security in the interim.

**END OF REPORT OF PRELIMINARY INVESTIGATION**

# EXHIBIT A

EXHIBIT A

Steve Scherer, President of Grassy Waters Conservancy, said updates of the documents are minor, and restated the mission and achievements for the last five years. He provided information on the financials, and current and future programs.

Commissioner Shoaf stated that this is a great program and asked if there is someone that can be directed from staff to replicate their program.

Mr. Scherer explained how their non-profit was created and the help received from the law firm to set it up. He can give advice to anyone who reaches out to him and his organization.

Commissioner Lambert encouraged residents who have not been to the nature center to visit it. She thanked Mr. Scherer for doing the programs.

Commissioner Peduzzi said he serves on the Board of the Conservancy and he can attest to the work they do.

Motion was made by Commissioner Peduzzi, seconded by Commissioner Lambert, to approve Resolution No. 288-19; and thereafter it was voted as follows: Ayes: Commissioners Lambert, Neering, Peduzzi, Ryles and Shoaf. Motion therefore carried unanimously.

11. Resolution No. 290-19 approving a Security Services Agreement with Professional Security Corporation to provide security services for all City facilities and roving services in Northwood.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA APPROVING A SECURITY SERVICES AGREEMENT WITH PROFESSIONAL SECURITY CORPORATION TO PROVIDE SECURITY SERVICES FOR CITY FACILITIES AND ROVING SECURITY IN NORTHWOOD; WAIVING THE PROCUREMENT REQUIREMENTS PURSUANT TO SECTION 66-94 OF THE CITY CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Frank Hayden, Director of the Office of Equal Opportunity, provided the background on the RFP for Security Guard Services and its withdrawal. He discussed the benchmark study and said based on the best value that they saw for the City, they are confident in making a decision to recommend approval of the contract with Professional Security Corporation (PSC).

Commissioner Lambert asked him to explain cohesive security throughout the City.

Mr. Hayden explained what facilities will be served.

Richard Morris, Deputy Chief of Police, explained the public benefit and having a unified security front as far as communication and intelligence.

Commissioner Shoaf asked about the process and what brings us here today.

Mr. Hayden said each time we go out to procure goods and services we look at what process is going to bring the best value for the City. We did go out to bid and ended up with one vendor, and we did not get what we needed because we looked at the dollars. In this sense we thought it was best to get input from the Police Department and what other municipalities have done, and that is why we made the recommendation.

Jeffrey Green, City Administrator, said we do not bid out the downtown because it is done by the DDA, and CityPlace does their own. This is the first time where services were done by different firms and the Police Department feels it is better to have one firm to be able to coordinate with each other.

Commissioner Shoaf asked about non-performance terms in the contract.

Mr. Hayden said we have in all contracts the ability to terminate for cause within a 30 day period of time. If there are problems with performance, we bring the individual or vendor in and lay out concerns. We give them a certain amount of time to correct the concern, and if not, we move to the next thing.

Commissioner Peduzzi asked about contracts from other government entities as opposed to asking for bids.

Mr. Hayden said that is the reason they are asking for waiver of the procurement process, to allow them to follow through with this contract.

There was discussion regarding: the contract; piggyback versus going out to bid; pitfalls on this approach; how often waivers are requested; and the status of the current contract with the current vendor.

Public comments were made by the following: Louise Stoney, Russ Griffin, Teneka Feaman, Timothy Elliott, Geoffrey Smith, Will Davis, Adam Giddens, Laura Marolla, and Matt Chambers.

Mayor James asked for clarity on what roving is.

Willie Perez, Representative of PSC, explained that roving means there is no fixed post.

Commissioner Ryles stated that he believes there is an impression that the Police Chief made the ultimate decision on this selection, which he

does not believe is the case.

Frank Adderley, Police Chief, said that they looked at the plan and realized increasing uniform presence enhances the level of security. He feels that one company doing it will be the best choice for the City.

Commissioner Ryles asked how this affects the Minority or Women-owned Business Enterprise (MWBE) criteria in the City.

Mr. Hayden said it was not part of the evaluation for this, but they can have the discussion with the vendor.

Commissioner Neering asked the City Attorney if there are any legal ramifications that can come from this process, because this is a significant amount of money.

Kimberly Rothenburg, City Attorney, said the Procurement Code gives the Commission the ability to award a contract that has not gone through the process. She stated that someone can challenge there action to that provision and what will come out in the court proceedings is what comes out based on the court's interpretation of the code. She said the Code provides the Commission the ability to enter into a contract that has not gone through the provisions provided for in the code. She does not think the court is in a position to tell the City what it can or cannot put in its Procurement Code.

Commissioner Neering said although the Commission has discretion to make this approval, he is still concerned about the process. One reason he supports this waiver is that the Mayor ran on the platform of public safety. He respects that this Administration feels like this is a logical step to move this City forward in public safety.

Mayor James commented on the dollar value of the contract and said it is important to get the right team from a public safety standpoint. He is convinced that this company can work well with the Police Department to further the efforts that were made during the short time of this new administration in the Police Department and that it is important to have that collaboration and cooperation so that the citizens can be best served. He is staking his political future on this decision but feels very confident and recommends the Commissioners to vote in favor of this contract.

Motion was made by Commissioner Shoaf, seconded by Commissioner Peduzzi, to approve Resolution No. 290-19; and thereafter it was voted as follows: Ayes: Commissioners Lambert, Neering, Peduzzi, Ryles and Shoaf. Motion therefore carried unanimously.

PUBLIC HEARING (12-14):

12. Public Hearing and Second Reading of Ordinance No. 4858-19 for City initiated request for a text amendment to Chapter 94, Article IV. Downtown Master Plan urban regulations to correct scrivener's errors.

# EXHIBIT B

EXHIBIT B

WEST PALM BEACH

Purchasing Department

**Single Source Justification**
**City-wide Security Services**

I have received information and justification from various City departments regarding the requirements for security services for the City. The fact of two differing security firms providing security services downtown is of significant concern to the Police Department and City Administration. The Police have indicated a lack of coordination and communication between the two current security firms and the Police when an incident occurs downtown and in or near a City facility. Neither current firm provides adequate service for the City Center plaza, each identifying the other as the responsible firm, and not providing adequate service to the public and City staff when incidents occur in the plaza. Members of the public and City staff complain that if they wish to be escorted to their car in a City garage, they must first call one firm to escort them along the street, then call and wait for the other firm to escort them through the garage to their car. Merchants in Northwood desire the same "ambassador" type security service provided by DDA's firm to the downtown merchants.

The DDA has worked with PSC security for the past five years to develop their "ambassador" approach which is unlike general security services. The roving security guards patrol the streets, and take a pro-active approach to assisting persons who appear to be in need of directions or other information. Additionally, the roving security guards regularly go inside the businesses to communicate with the business owner/manager regarding any situations or to provide or receive information. The downtown merchants have expressed their great satisfaction with the program as it has developed. The DDA's contract with PSC Security will expire in 5 years.

Pursuant to Sec. 66-64 of the City's Code of Ordinances, part of the Procurement Code, the procurement official may select a single source without competition if, after conducting a search for available sources, the procurement official determines that only a single source is practicable or for other reasons, single source selection is in the City's best interest.

Based on the City's need for comprehensive security services from one security firm, and the fact that the DDA's contract will not expire for 5 years, it was my determination that selection of PSC as a single source is justified because no other firm is in a position to serve both the DDA and City and be able to provide seamless security services during the next 5 years. I found that this single source selection is in the best interest of the City.

Based on my single source determination, and in accordance with the Code, the City could have executed the contract with PSC without further approvals. However, in the interest of transparency, it was determined to take the contract to the City Commission for approval, and the use of Sec. 66-94 was the means to bring the contract to the Commission for approval. Accordingly, at that time I did not reduce my single source finding to writing since Commission approval was sought.

Nevertheless, I believe it prudent at this time to put my approval of single source selection of PSC for the City-wide Security contract in writing.

Date: 9/20/19, 2019

Frank Hayden, Procurement Official

# EXHIBIT C

EXHIBIT C

Sec. 66-64. - Single source.

Upon receipt of justification from the user department and the proposed single source, the procurement official may select a single source without competition if, after conducting a search for available sources, the procurement official determines that only a single source is practicable or for other reasons single source selection is in the city's best interest. Upon the procurement official's written approval of single source selection, contract negotiations shall commence with the single source. If contract terms are agreed upon, a contract between the city and the single source will be executed. The procurement official shall maintain a record of single source procurements which contains the nature and amount of the procurement and the name of the single source.

(Ord. No. 4292-10, § 2, 12-13-2010)

C1

# EXHIBIT D

EXHIBIT D

Sec. 66-94. - Contracts which require commission approval.

(a) The following category of contracts shall require the approval of the city commission prior to execution by the mayor:

(1) Contracts for construction of buildings and structures except those structures that are a part of the water, wastewater, and storm water systems;

(2) Contracts for insurance, including property, damage, liability, health, worker's compensation, or any other insurance;

(3) Contracts where the requirements of this chapter have not been fulfilled;

(4) Contracts to be approved pursuant to subsection (b) of this section; and

(5) Contracts which require such approval pursuant to state statutes.

(b) If city commission approval is required, or requested pursuant to subsection 66-95(a), the matter shall be placed on a city commission meeting agenda. An agenda cover memorandum shall be prepared by the user department and shall include, but not be limited to, the following information:

(1) The identity of the vendor or contractor;

(2) The procurement method by which the vendor or contractor was selected;

(3) The nature of the procurement;

(4) The contract price;

(5) The time of performance;

(6) The user division, department, or agency of the city;

(7) Budgeted source of funds; and

(8) Budgeted amount.

(Ord. No. 4292-10, § 2, 12-13-2010)

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# EXHIBIT E

EXHIBIT E

| Agenda Date | Resolution No | Vendor | Description | Contract Amount | | Contract NO. |
|---|---|---|---|---|---|---|
| 01/28/19 | 24-19 | Moore Communications | Marketing and Communications Strategies for Downtown Mobility Plan | $35,160.00 | | 23613 |
| 01/28/19 | 49-19 | Save My limited Incorp. | Implementation of Vision Zero Downtown Mobility | $80,000.00 | Est. | 21757.001 |
| 04/22/19 | 135-19 | Gustavo Baez Tech Corp | Lotus Notes Consulting Services for IT Dept. | $130,000.00 | Not to Exceed | 21172 |
| 05/20/19 | 179-19 | Granicus, LLC | Website Design and Ongoing Maintenance, Hosting, and licensing | $130,000.00 | Not to Exceed | 23454 |
| 09/09/19 | 294-19 | FernLeaf Interactive, LLC | City's Climate Resilience Plan | $49,628.00 | | 24064 |
| 09/09/19 | 290-19 | PSC - Professional Security Corp | Security Services for 3 Years | $4,751,277.30 | | 24005 |
| | | | | **$5,176,065.30** | | |

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