

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date: July 11, 2023	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Department: County Attorney

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to: a) approve payment of a Final Judgment resulting from a jury verdict rendered, in the total amount of \$604,959.47, which includes statutory interest, but excludes attorney's fees, expert fees, and costs, in the Inverse Condemnation action styled Golden City Highland Beach, LLC, v Palm Beach County, Case No.: 502018CA004089XXXMB AK. **b) to approve** a budget transfer of \$604,960 in the General Fund from Contingency Reserves to allocate funds for payment of a Final Judgement.



Summary: In 2015, as part of the Living Shoreline Projects, the County placed Rip Rap Breakwaters ("rocks") on submerged land owned by Golden City Highland Beach LLC, without the owner's consent. The owner subsequently filed an Inverse Condemnation lawsuit claiming entitlement to full compensation for the County's unlawful physical taking of its property from August 3, 2015 through June 2, 2022, when the County removed the rocks. After a two-week trial in which the owner claimed \$3.2 million in damages to its property for the County's placement and removal of the rocks, on June 8, 2023, the Jury awarded the owner \$425,700 in damages. The Court entered a Final Judgment in favor of the owner on June 13, 2023 for a total of \$604,959.47, including \$179,259.47 as statutory interest from the date of the taking, August 3, 2015, to the date of the Final Judgment. District 4 (DO).

Background and Policy Issues: In 2015, as part of the Living Shoreline Projects, primarily to protect shoreline erosion, the County installed Rip Rap Breakwaters ("rocks") on the submerged land along the Intracoastal Waterway from Juno Beach to Highland Beach. However, approximately 950 tons of the rocks were erroneously installed on a portion of submerged land owned by Golden City Highland Beach, LLC ("Golden City"), located at 3822 South Ocean Boulevard, Highland Beach. Golden City's property, which is approximately 7.35 acres in total, consists of only one-tenth (1/10) acre of uplands (dry land) and the rest of the property consists of wetlands populated mostly by mangroves or submerged land. As mangroves are protected species, to develop the property Golden City would destroy mangroves and therefore be required by the regulatory agencies to undertake expensive measures to mitigate for that destruction. In 2017, Golden City, through its attorneys, contacted the County and complained that the County had placed the rocks on its property without permission and demanded that the County provide mitigation credits as compensation.

Background and Policy Issues: (Continued on page 3)

- Attachments:**
1. Amended Final Judgment
 2. Budget Transfer

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Recommended by:		<u>7/10/2023</u>
	County Attorney	Date
Approved by:		<u>7/10/2023</u>
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Inc. (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No X

Does this Item include the use of federal funds? Yes ___ No X

Budget Account No.:

Fund 000 Agency _____ Organization _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

AST/CLL 7/10/23
OFMB QA 710

John S. Jankovic 7/10/23
Contract Development and Control
TMS 7/10/23

B. Legal Sufficiency:

[Signature]
Chief Assistant County Attorney

C. Other Department Review:

n/a
Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Policy Issues: (Continued from Page 1)

After discussions failed, the County advised Golden City that it would remove the rocks from the property. However, Golden City, through its attorneys, responded by placing roadblocks to prevent the County from removing the rocks. First, Golden City warned the County that if it entered the property and attempted to remove the rocks, the County would be trespassing on private property. Golden City further warned the County that if it removed the rocks, Golden City would claim spoliation (destruction) of evidence.

Golden City then filed an Inverse Condemnation lawsuit against the County, alleging \$4,085,040.00 in damages for placing the rocks on the property and permanently deprive Golden City the opportunity to develop the land as it intended for townhomes.

As the litigation ensued, the County sought to obtain permits from Florida Department of Environmental Protection (DEP) and the U.S. Army Corp of Engineers (USACE), to remove the rocks. However, while the County was successful in obtaining the USACE permit, because of the ongoing litigation, the DEP required Golden City to be a co-applicant with the County as a condition to issue the permit, but they refused. The County also asked Golden City for an easement to go on the property and remove the rocks. Golden City refused and requested relief from the Court through a Partial Summary Judgment motion. In granting Golden City's request, the Court ruled that the County installed the rocks on Golden City's property without its consent and required the County to obtain the necessary permits before removing the rocks. More importantly, the Court ruled that the installation of the rocks on Golden City's property resulted in a permanent physical taking of Golden City's property that required full and just compensation, including damages for the diminution value, and severance damages for impacts to the remainder of the property.

While the Court's ruling entitled Golden City to full compensation, the ruling also established sufficient property interest in the land for the County to obtain the DEP permit to remove the rocks, without Golden City as a co-applicant. The County obtained the DEP permit and removed the rocks, despite Golden City's protest and threats to the County, to cease and desists removing the rocks. After removing the rocks, the County filed a motion requesting the Court modify its previous Order with respect to the ruling that there was a permanent physical taking of Golden City's property. The Court granted the County's motion and ruled that the placement of the rocks on Golden City's property was a temporary physical taking from August 3, 2015 through June 2, 2022. Golden City subsequently modified its appraised damages from \$4,085,040.00 to \$3,399,950.00.

At the start of the jury trial on May 30, 2023, to determine full compensation for the six (6) years and ten (10) months that the rocks physically occupied the property, Golden City further reduced its appraised damages to \$3.2 million. The County's position at trial was that the taking only encompassed the footprint of the rocks, which both the County and Golden City valued at \$15,700.00. The County maintained that there was no further damage to Golden City either by a diminution of the property value or impact to the remainder as alleged. Golden City argued that the placement and removal of the rocks resulted in a loss of mitigation opportunities and environmental damage to the submerged land that resulted in a diminution of the property value at \$3.2 million. After two (2) days of deliberation, the jury returned a verdict of \$15,700.00 for the six (6) years and ten (10) months of physical occupation of the property, and \$410,000.00 for severance damages, for a total verdict of \$425,700.00. Pursuant to Florida law, Golden City is entitled to prejudgment interest from the date of the taking by the County to the date of the Final Judgment. Accordingly, Golden City is entitled to \$179,259.47 in prejudgment interest for a total award of **SIX HUNDRED FOUR THOUSAND NINE HUNDRED FIFTY-NINE AND 47/100 DOLLARS** (\$604,959.47). As this in an Inverse Condemnation suit and the Court determined that there was a taking by the County, Golden City is entitled to reasonable, Attorneys' fees, Expert Fees and Costs, which the Court retains jurisdiction to decide.

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR
PALM BEACH COUNTY.

CASE NO. 502018CA004089XXXXMB AK

GOLDEN CITY HIGHLAND BEACH, LLC,

Plaintiff,

v.

PALM BEACH COUNTY,

Defendant.

AMENDED FINAL JUDGMENT
(as to the addition of Exhibit A only)

THIS CAUSE having come before the Court for jury trial on May 30, 2023, and the jury having been impaneled and sworn to try what compensation shall be made to the Plaintiff, Golden City Highland Beach, LLC's ("Golden City") for damages to its property, having considered the testimony of witnesses, having heard the charges of the Court and having rendered its verdict which is attached and incorporated herein as **Exhibit A**, it is:

ORDERED and ADJUDGED as follows:

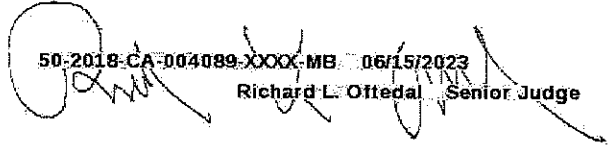
1. The Court confirms and ratifies its Order on Liability, entered on August 9, 2021, and its Order entered on September 27, 2022, finding that the taking of Golden City's property ended.
2. Golden City has and recovers from Defendant, Palm Beach County ("County") the sum of FOUR HUNDRED THOUSAND TWENTY-FIVE SEVEN HUNDRED AND 00/100 DOLLARS (\$425,700.00).
3. Golden City shall additionally receive from the County the sum of ONE HUNDRED SEVENTY-NINE THOUSAND TWO HUNDRED FIFTY-NINE AND 47/100 DOLLARS (\$179,259.47) as statutory interest from August 3, 2015 through June 13,

2023.

4. Accordingly, Golden City shall recover from the County, the sum of paragraphs two, and three, above, for the total amount of SIX HUNDRED FOUR THOUSAND NINE HUNDRED FIFTY-NINE AND 47/100 DOLLARS (\$604,959.47), plus interest accruing thereafter on the sum set forth in paragraph two at the legal rate. Absent an appeal and the entry of any stay, within forty-five (45) days of the entry of this judgment, County shall pay this amount by making a check in this amount payable to the Jones Foster Trust Account and mailing same to Roberto M. Vargas, Esquire, 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401.

5. That the Court reserves jurisdiction on the issue of attorneys' fees and costs pursuant to Florida Statutes §§ 73.091 and 73.092.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida.


50-2018-CA-004089-XXXX-MB 06/15/2023
Richard L. Oftedal, Senior Judge

50-2018-CA-004089-XXXX-MB 06/15/2023
Richard L. Oftedal
Senior Judge

Copies to:

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Attorneys for Defendant, PBC

/var/www/html/scheduling/orders_temp/50-2018-CA-004089-XXXX-MB_endedfinaljudgment.DOCX

CASE NO. 502018CA004089XXXMB AK

GOLDEN CITY HIGHLAND BEACH, LLC,

Plaintiff,

v.

PALM BEACH COUNTY,

Defendant.

VERDICT

WE, the Jury, find as follows:

FIRST: That an accurate description of the property taken is attached hereto as **Exhibit A.**

SECOND: That the compensation to be paid by the Defendant, Palm Beach County, to the Plaintiff, Golden City Highland Beach, LLC, as full compensation for the above-referenced property is as follows:

Compensation for taking of the property (land value): \$ 15,700

Severance damages caused by the taking: \$ 410,000

TOTAL COMPENSATION TO GOLDEN CITY HIGHLAND BEACH, LLC:

\$ 425,700

SO SAY WE ALL this 8 day of, 2023, at West Palm Beach, Palm Beach County, Florida.


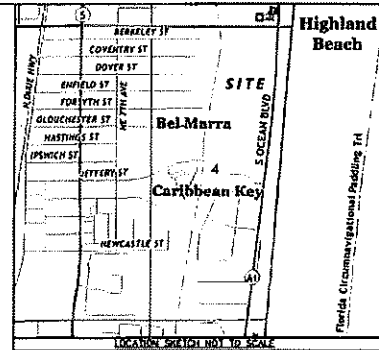
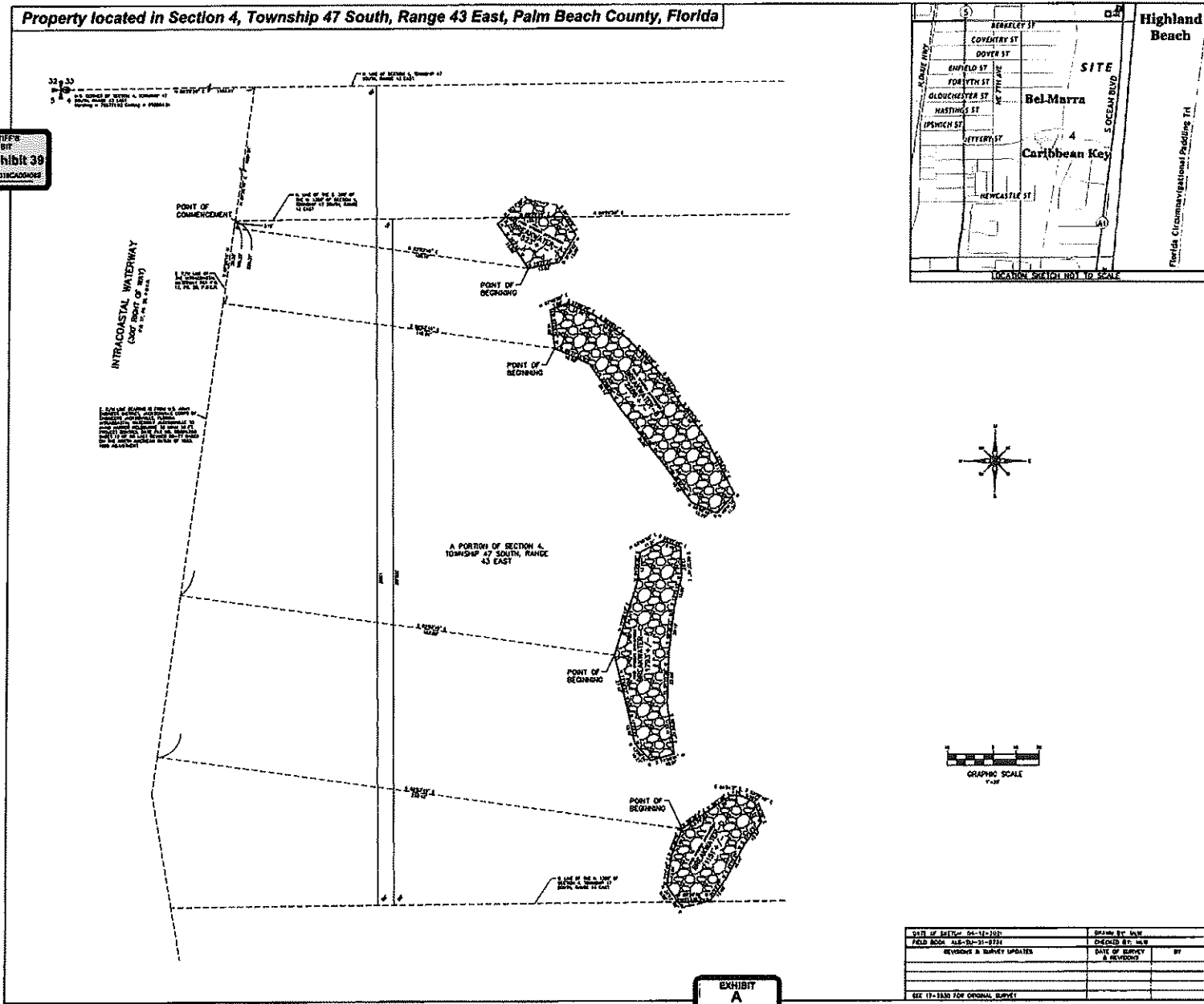

FOREPERSON Shayla Rolle

EXHIBIT A

Property located in Section 4, Township 47 South, Range 43 East, Palm Beach County, Florida

PLANNING EXHIBIT
Trial Exhibit 39
 Case No. 2018-002249-0000



ACCURATE LAND SURVEYORS, INC.
 L.R. 00433
SKETCH AND DESCRIPTIONS
SYMBOLS & LEGEND OF ABBREVIATIONS:

BL	BANK LINE	SL	SEAMLESS LINE
B	BOUNDARY	S	SUBJECT PROPERTY
C	CONCRETE	TC	TOWNSHIP CORNER
D	DITCH	W	WATER
E	EAVE	WM	WATER MAIN
F	FENCE	WM	WATER MAIN
G	GRASS	WM	WATER MAIN
H	HOLE	WM	WATER MAIN
I	IRON PIPE	WM	WATER MAIN
J	JACK	WM	WATER MAIN
K	KIDNEY	WM	WATER MAIN
L	LAG	WM	WATER MAIN
M	MOUND	WM	WATER MAIN
N	NAIL	WM	WATER MAIN
O	OPEN	WM	WATER MAIN
P	POST	WM	WATER MAIN
Q	QUANTIFICATION	WM	WATER MAIN
R	RANGE	WM	WATER MAIN
S	SECTION	WM	WATER MAIN
T	TOWNSHIP	WM	WATER MAIN
U	UTILITY	WM	WATER MAIN
V	VALVE	WM	WATER MAIN
W	WATER	WM	WATER MAIN
X	WATER MAIN	WM	WATER MAIN
Y	WATER MAIN	WM	WATER MAIN
Z	WATER MAIN	WM	WATER MAIN

STREET ADDRESS:
 Vacant property on South Ocean Drive, Highland Beach, Florida 33447
 Parcel ID: 24-43-47-04-00-001-0002

BREAKWATER-A LEGAL DESCRIPTION:
 A portion of the South 800 feet of the North 1350 feet of Section 4, Township 47 South, Range 43 East, Palm Beach County, Florida, lying between the intracoastal waterway and the right-of-way for State Road 140 (A-1-4), being more particularly described as follows:
 Commence at the intersection of the North line of the South 300 feet of the North 1350 feet of the aforementioned Section 4 and the East Right of Way line of the Intracoastal Waterway as shown in Plat Book 17, Page 10, Palm Beach County Records; thence South 07°56'15" West (bearing of bearing) along the aforementioned East Right of Way line, a distance of 8.13 feet; thence South 82°30'45" East, a distance of 130.59 feet to the Point of Beginning; thence North 33°03'43" West, a distance of 23.68 feet; thence North 53°17'35" East, a distance of 6.81 feet to a point on the North line of the South 300 feet of the North 1350 feet of the aforementioned Section 4; thence South 89°37'20" East along the aforementioned North line a distance of 24.73 feet; thence South 37°29'08" East, a distance of 47 feet; thence South 37°22'22" West, a distance of 12.83 feet; thence South 78°37'20" West, a distance of 51.63 feet to the Point of Beginning, said described breakwater containing 313 square feet, more or less.

BREAKWATER-B LEGAL DESCRIPTION:
 A portion of the South 800 feet of the North 1350 feet of Section 4, Township 47 South, Range 43 East, Palm Beach County, Florida, lying between the intracoastal waterway and the right-of-way for State Road 140 (A-1-4), being more particularly described as follows:
 Commence at the intersection of the North line of the South 300 feet of the North 1350 feet of the aforementioned Section 4 and the East Right of Way line of the Intracoastal Waterway as shown in Plat Book 17, Page 10, Palm Beach County Records; thence South 07°56'15" West (bearing of bearing) along the aforementioned East Right of Way line, a distance of 18.13 feet; thence South 82°30'45" East, a distance of 146.84 feet to the Point of Beginning; thence North 07°03'18" West, a distance of 16.88 feet; thence North 67°48'37" East, a distance of 7.88 feet; thence North 87°09'30" East, a distance of 11.39 feet; thence South 85°02'13" East, a distance of 18.30 feet; thence South 42°13'20" East, a distance of 23.28 feet; thence South 87°27'30" East, a distance of 0.76 feet; thence South 87°16'53" East, a distance of 22.48 feet; thence South 27°13'46" West, a distance of 17.21 feet; thence South 40°41'15" West, a distance of 13.34 feet; thence North 61°07'07" West, a distance of 11.29 feet; thence North 38°07'10" West, a distance of 38.25 feet; thence North 88°23'45" West, a distance of 13.82 feet; thence North 85°30'48" West, a distance of 13.88 feet; thence North 65°37'51" West, a distance of 18.80 feet to the Point of Beginning, said described breakwater containing 2386 square feet, more or less.

BREAKWATER-C LEGAL DESCRIPTION:
 A portion of the South 800 feet of the North 1350 feet of Section 4, Township 47 South, Range 43 East, Palm Beach County, Florida, lying between the intracoastal waterway and the right-of-way for State Road 140 (A-1-4), being more particularly described as follows:
 Commence at the intersection of the North line of the South 300 feet of the North 1350 feet of the aforementioned Section 4 and the East Right of Way line of the Intracoastal Waterway as shown in Plat Book 17, Page 10, Palm Beach County Records; thence South 07°56'15" West (bearing of bearing) along the aforementioned East Right of Way line, a distance of 185.32 feet; thence South 82°30'45" East, a distance of 191.06 feet to the Point of Beginning; thence North 18°38'38" East, a distance of 34.71 feet; thence North 04°08'18" East, a distance of 12.38 feet; thence North 62°35'08" East, a distance of 11.31 feet; thence South 80°07'41" East, a distance of 6.80 feet; thence South 05°22'40" East, a distance of 13.57 feet; thence South 18°49'41" West, a distance of 12.86 feet; thence South 08°28'33" West, a distance of 22.19 feet; thence South 01°25'50" West, a distance of 22.88 feet; thence South 08°48'41" East, a distance of 21.11 feet; thence South 74°30'31" West, a distance of 10.61 feet; thence North 47°30'34" West, a distance of 10.33 feet; thence North 13°25'24" West, a distance of 13.16 feet; thence North 13°42'27" West, a distance of 27.47 feet to the Point of Beginning, said described breakwater containing 1773 square feet, more or less.

BREAKWATER-D LEGAL DESCRIPTION:
 A portion of the South 300 feet of the North 1350 feet of Section 4, Township 47 South, Range 43 East, Palm Beach County, Florida, lying between the intracoastal waterway and the right-of-way for State Road 140 (A-1-4), being more particularly described as follows:
 Commence at the intersection of the North line of the South 300 feet of the North 1350 feet of the aforementioned Section 4 and the East Right of Way line of the Intracoastal Waterway as shown in Plat Book 17, Page 10, Palm Beach County Records; thence South 07°56'15" West (bearing of bearing) along the aforementioned East Right of Way line, a distance of 236.37 feet; thence South 67°03'45" East, a distance of 212.81 feet to the Point of Beginning; thence North 56°09'40" East, a distance of 13.79 feet; thence North 54°01'13" East, a distance of 22.13 feet; thence South 84°34'03" East, a distance of 4.16 feet; thence South 82°30'45" East, a distance of 6.60 feet; thence South 27°04'56" East, a distance of 8.14 feet; thence South 07°37'15" West, a distance of 21.37 feet; thence South 37°18'27" West, a distance of 16.41 feet; thence South 34°41'27" West, a distance of 13.85 feet to a corner on the South line of the North 1350 feet of the aforementioned Section 4; thence South 87°18'18" West, a distance of 11.83 feet; thence North 67°25'31" West, a distance of 8.28 feet; thence North 07°32'46" East, a distance of 22.84 feet; thence North 31°10'18" East, a distance of 13.06 feet to the Point of Beginning, said described breakwater containing 1151 square feet, more or less.

CERTIFICATION:
 That I do hereby certify that this sketch was made under my responsible charge and is accurate and correct to the best of my knowledge and belief and does not constitute a field survey as such. I further certify that this sketch meets the current standards of practice established by the Board of Professional Surveyors and Mappers, Chapter 32-13, Florida Administrative Code, pursuant to current Section 472.012, Florida Statutes.

GRAPHIC SCALE
 1" = 200'

DATE OF SKETCH	04-11-2023	DRAWN BY	W.D.
FIELD BOOK	48-12-31-0731	CHECKED BY	W.D.
REVISIONS & SURVEY UPDATES		DATE OF SURVEY	8/15/2022
		BY	

EXHIBIT A
VERDICT FORM

SEE 17-1240 FOR ORIGINAL SURVEY

SHEET 1 OF 1 SCALE 1"=20' SKETCH NUMBER DJ-21-0724

23-0774

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER

BGEX 380 071023-1511

FUND 0001 GENERAL FUND

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED As of 07/07/23	REMAINING BALANCE
<u>REVENUES/EXPENDITURES</u>								
380-3130-4905	Legal Settlement	0	0	604,960	0	604,960		604,960
820-9900-9901	Contingency Reserves	20,000,000	20,426,600	0	604,960	19,821,640		19,821,640
Total Receipts and Balances		1,897,887,942	1,958,576,607	604,960	604,960	1,958,576,607		

Signatures & Dates

Environmental Resources Management

INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Sandra Thompson

ASDUE 7/10/23

By Board of County Commissioners

At Meeting of

July 11, 2023

Deputy Clerk to the

Board of County Commissioners