

**Village of Royal Palm Beach
Village Council
Agenda Item Summary**

AGENDA ITEM:

APPROVAL AND AUTHORIZATION FOR THE MAYOR TO ENTER INTO A COST AGREEMENT WITH MAIN STREET AT TUTTLE ROYALE, LLC FOR TUTTLE ROYALE DEVELOPMENT REVIEW COST RECOVERY FOR SEVERAL DEVELOPMENT APPLICATIONS AFFECTING THE MASTER TUTTLE ROYALE DEVELOPMENT.

ISSUE:

The proposed Cost Agreement for Tuttle Royale Development Review ("Agreement") between the Village and Main Street at Tuttle Royale has been prepared in response to a request from the Developer to process the remaining development applications for the Tuttle Royale project, which include: 1) Master Plan/Special Exception; 2) Zoning Text Amendment; 3) Preliminary Plat; 4) Final Plat; 5) Easement Abandonments; 6) Comprehensive Plan Amendment (POD 6); 7) Rezoning (POD 6); 8) Site Plan/Architectural and Aesthetic Review (POD 6); and 9) Variances (POD 6) in an expedited manner.

Village protocol is to place a received application on a regularly scheduled TSR agenda 21-days after the application is received. The Developer has requested a 14-day TRS agenda placement timeline which places an extraordinary burden on Village staff and will require outside consultants to review the applications. In an attempt to accommodate this request, this Agreement requires the Developer to agree to pay all application review costs and all legal advertising and administrative costs incurred by the Village's consultants, including Planning and Zoning, Engineering (including Surveyor) and Legal to accommodate the expedited TSR review timeline, with a fifty percent (50%) deposit required upfront.

This Agreement does not guarantee the Developer any development rights, nor does it guarantee final site plan or other approval by the Village Council by any specified date.

Council approved a similar agreement at its regular meeting on November 17, 2022; however, the original Initial Deposit required by Section 4 of the agreement and provided by the applicant was returned for insufficient funds. On November 28, 2022, after the three-business day window required by Section 4 of the agreement, the applicant provided a cashier's check for the Initial Deposit which has cleared.

RECOMMENDED ACTION:

Staff recommends a motion to approve.

Initiator
Village Manager

Village Manager
Approval

Agenda Date
12/15/22

Village Council

COST AGREEMENT FOR TUTTLE ROYALE DEVELOPMENT REVIEW

This Cost Agreement for Tuttle Royale Development Review (the "Agreement") is made this ____ day of _____ 2022, by and between Main Street at Tuttle Royale, LLC, a Florida limited liability company with a principal address of 1301 W. Royal Palm Road, Boca Raton, FL 33486 (the "Applicant"), and the Village of Royal Palm Beach, Florida, a municipal corporation with a principal address of 1050 Royal Palm Beach Boulevard, Royal Palm Beach, FL 33411 (the "Village").

WHEREAS, the Code of Ordinances of the Village of Royal Palm Beach, Florida provides at Section 26-32(d)(2) that “within seven (7) calendar days of receipt of an application, the Village Planning and Zoning Director shall schedule a meeting of technical staff to be held not more than twenty-one (21) days from the date of receipt of such application”; and

WHEREAS, current Village protocol is to place received applications on the regularly scheduled Technical Staff Review (“TSR”) agenda twenty-one (21) days after the application is received; and

WHEREAS, the Applicant is currently in the process of filing several development applications for POD 6 within the master Tuttle Royale development, including: 1) Master Plan/Special Exception; 2) Zoning Text Amendment; 3) Preliminary Plat; 4) Final Plat; 5) Easement Abandonments; 6) Comprehensive Plan Amendment (POD 6); 7) Rezoning (POD 6); 8) Site Plan/Architectural and Aesthetic Review (POD 6); and 9) Variances (POD 6) (the "Applications"); and

WHEREAS, the Applicant has requested TSR agenda placement fourteen (14) days after application submittal and agreed to pay all application review costs, legal advertising and administrative costs incurred by the Village’s consultants, including Planning and Zoning, Engineering (including Surveyor) and Legal, to accommodate the expedited TSR review timeline; and

WHEREAS, while the Village Code permits the 14-day TSR agenda placement timeline requested, the parties recognize that such processing of the Applications will place an extraordinary burden on Village staff and requires outside consultant review to accommodate; and

WHEREAS, this Cost Agreement is made between the Applicant and the Village in order to alleviate that burden and allow the Village to process the Applications within the time requested by the Applicant.

NOW THEREFORE, in consideration of the mutual promises and conditions herein contained, the parties covenant and agree as follows:

1. Development Application Receipt and TSR Agenda Placement. The Village and Applicant agree that an intake clerk in the Planning & Zoning Department will perform a preliminary completeness review within forty-eight (48) hours of application submittal through ProjectDox. If the intake clerk deems the submittal complete, the Village will place the application submittal on a TSR agenda fourteen (14) days from the date of application submittal. If the intake clerk deems the submittal incomplete, the Village will notify the Applicant by close of business on the application submittal date and request correction of all deficiencies and resubmittal of the application.

2. TSR Certification and Public Hearing Agenda Placement. The Applicant agrees that this Agreement does not modify the TSR certification, public hearing agenda placement and legal advertising timelines set forth in Section 26-32(3)-(7) of the Village's Code of Ordinances.

3. Costs. The Village has retained or will retain the services of certain consultants to assist in reviewing the Applications, drafting comments and providing consultation as necessary on the Applications, including planning, engineering, surveying and legal consultants. Such consultants charge hourly fees to the Village. Estimates provided by each of the Village's consultants to review the Applications are attached hereto as Exhibit "A". The Village will also incur additional costs including publication of legal notices and administrative costs associated with the Applications. Notwithstanding the Cost Estimates provided in Exhibit "A", the Applicant hereby expressly agrees to pay and/or reimburse the Village for all development application review fees, legal advertising costs, and administrative costs in the amount of twenty percent (20%) of the total review fees and costs associated with processing the Applications ("the Actual Cost").

4. Deposit.

a. On November 28, 2022, Applicant deposited with the Village a Cashier's Check in the amount of Fifty Nine Thousand Four Hundred Seventeen Dollars and Fifty Cents (\$59,417.50), an amount equal to fifty percent (50%) of the Estimated Costs provides in Exhibit "A" (the "Initial Deposit"), to cover the costs provided for in Section 1 hereof. Development Application processing and agenda placement pursuant to Section 1 above will not begin until the Initial Deposit has cleared and all funds become available to the Village. The Village shall withdraw funds from such deposit to cover such costs as the costs become due and payable to the

Village's consultants and vendors. Should the Village Council not approve this Cost Agreement on December 15, 2022, the Village shall refund the entire \$59,417.50 within three (3) business days of Council action.

b. The Village shall prepare a monthly invoice to Applicant showing the amounts withdrawn. The Village shall furnish documentation for each billing upon Applicant's request.

c. When the Initial Deposit is depleted, the Applicant shall, within three (3) business days of the depletion, pay to the Village, via Cashier's Check, the remaining balance of the Estimated Costs (the "Remaining Balance"). Processing of the Applications shall be suspended until the Remaining Balance is received by the Village and cleared with funds having become available to the Village.

d. If the Applications are withdrawn, the Village shall refund any remaining amounts to Applicant after all the Village's costs through the date of withdrawal have been paid in full. If the Estimated Costs exceed the Actual Cost incurred, the Village shall refund the difference to the Applicant.

5. No Rights. The Applicant agrees and understands that it acquires no rights by virtue of this Agreement, and that the Applications are subject to final approval by the Village Council of the Village of Royal Palm Beach. The Applicant further agrees that this Agreement does not guarantee final site plan or other approval by the Village Council by any specified date.

6. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, and venue shall be in Palm Beach County should any dispute arise with regard to this Agreement.

7. Attorneys' Fees. The prevailing party in any litigation arising out of or in any manner based on or relating to this Agreement, including tort actions and actions for injunctive, declaratory, and provisional relief, shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs, including fees for litigating the fees incurred and fees in connection with appellate proceedings.

8. Modification. This Agreement may be amended or modified only by written agreement of all parties.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors, assigns or heirs.

10. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force, if the essential provisions of this Agreement for each Party remain valid, binding, and enforceable. Each Party has reviewed this Agreement and all of its terms with legal counsel, or had an opportunity to review this Agreement with legal counsel, and is not relying on any representations made to him by any other person concerning the effect of this Agreement.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed an original and all of which shall be deemed one and the same instrument. Facsimile or electronic transmission signatures of this Agreement shall be deemed to be original signatures.

12. Entire Agreement. The parties agree that this Agreement sets forth the entire agreement between them, and that there are no promises or understandings other than those stated herein.

13. No Third-Party Beneficiaries. Except as expressly provided herein, there are no intended third-party beneficiaries to this Agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, this Agreement has been executed on the date first written above.

**MAIN STREET AT TUTTLE ROYALE,
LLC**

Michael Tuttle, Manager

VILLAGE OF ROYAL PALM BEACH

Fred Pinto, Mayor

ATTEST:

Diane DiSanto, Village Clerk

APPROVED AS TO FORM:

Keith W. Davis, Village Attorney

Exhibit “A” Cost Estimate Engineering

Compensation

Erdman Anthony proposes to complete the above-described scope of services on an hourly rate basis in accordance with the contract hourly rate schedule. The fees are expected to be up to \$70,000 as shown below. This amount is a budgeted amount that may or may not be fully consumed and that may be exceeded depending on the effort expended; we will keep you informed of our progress and fees. Reimbursable expenses, such as permit application fees, printing, copying and mileage will be invoiced at 1.15 times the rate that is charged to Erdman Anthony by the vendor.

ACTIVITY DESCRIPTION	\$200	\$200	\$165	\$200	\$200	TOTAL TASK MAN-HOURS	Fee Amount
	Principal (Civil Engineer)	Principal (Traffic Engineer)	Senior Engineer (Civil Engineer)	Mobility	Landscape		
1 Initial review							
a Site Plan / Parking count	5		10	20		35	\$6,650
b Architectural / Landscape Plan				5	20	25	\$5,000
c Engineering Plan / Drainage	20		20			40	\$7,300
d Traffic Analysis		40		15		55	\$11,000
5 TSR 1 12/1/22							
a Review documents submitted	20	20	20	20	4	84	\$16,100
b Attend TSR	2					2	\$400
6 TSR 2 12/22/22							
a Review documents submitted	10	10	10	10	4	44	\$8,450
b Attend TSR	2					2	\$400
7 TSR 3 1/12/23							
a Review documents submitted	10	10	5	10	4	39	\$7,625
b Attend TSR	2					2	\$400
8 TSR 4 2/2/23							
a Review documents submitted	5	5	5	5		20	\$3,825
b Attend TSR	2					2	\$400
9 Planning and Zoning Board							
a Review documents submitted	2	2	2	2		8	\$1,530
b Attend P/Z	2					2	\$400
10 Village Council	2					2	\$400
Total	84	87	72	87	32	362	\$69,880

Exhibit "A"

Cost Estimate

Legal

Devis Associates
Legal Fees

Submittal	Submittal Review (hrs)	300' Notice (hrs)	AIS/Staff Report/Resolution/Meeting Attendance (hr)	Total Hours	Total Fee (Hourly Rate \$200.00)
Master Plan/ Special Exception					
October 25, 2022 LPA	0.00	0.00	0.00	0.00	\$0.00
November 17, 2022 Village Council	0.00	0.00	1.25	1.25	\$250.00
Zoning Text - MXS District					
October 25, 2022 LPA	0	0	0	0.00	\$0.00
November 17, 2022 First Reading Village Council	0	0	0.75	0.75	\$0.00
December 15, 2022 Second Reading	0	0	0.75	0.75	\$0.00
Preliminary Plat					
November 3, 2022 TSR Submittal for November 28, 2022	5.00	0.00	0.00	5.00	\$1,000.00
December 13, 2022 P&Z	0.00	0.25	1.75	2.00	\$1,750.00
December 15, 2022 Village Council	0.00	0.00	0.75	0.75	\$1,312.50
Final Plat					
December 1, 2022 TSR Submittal for January 5, 2022 TSR	5.00	0.00	0.00	5.00	\$1,000.00
January 19, 2023 Village Council	0.00	0.25	1.25	1.50	\$1,250.00
Easement Abandonment 1					
December 1, 2022 TSR Submittal for January 5, 2022 TSR	2.00	0.00	0.00	2.00	\$400.00
January 19, 2023 Village Council	0.00	0.25	1.00	1.25	\$400.00
Easement Abandonment 2					
December 1, 2022 TSR Submittal for January 5, 2022 TSR	2.00	0.00	0.00	2.00	\$400.00
January 19, 2023 Village Council	0.00	0.25	1.00	1.25	\$400.00
Comp. Plan Map Amendment					
November 10, 2022 LPA	0.00	0.25	1.75	2.00	\$400.00
November 17, 2022 Village Council First Reading	0.00	0.00	1.00	1.00	\$200.00
December 15, 2022 Village Council Second Reading	0.00	0.00	1.00	1.00	\$200.00
Rezoning					
Third TSR Submittal November 3, 2022 for November 17, 2022 TSR	5.00	0.00	0.00	5.00	\$1,000.00
December 13, 2022 LPA	0.00	0.25	1.25	1.50	\$1,250.00
December 15, 2022 Village Council First Reading	0.00	0.00	1.00	1.00	\$1,250.00
January 19, 2023 Village Council Second Reading	0.00	0.00	1.00	1.00	\$1,250.00
Site Plan					
TSR 1 Submittal November 17, 2022 for the December 1, 2022 TSR	5.00	0.00	0.00	5.00	\$1,000.00
TSR 2 Submittal December 8, 2022 for December 22, 2022 TSR	5.00	0.00	0.00	5.00	\$1,000.00
TSR 3 Submittal December 29, 2022 for January 12, 2023 TSR	5.00	0.00	0.00	5.00	\$1,000.00
TSR 4 Submittal January 19, 2023 for February 2, 2023 TSR	5.00	0.00	0.00	5.00	\$1,000.00
February 14, 2023 Planning and Zoning	0.00	0.25	2.75	3.00	\$600.00
February 16, 2023 Village Council.	0.00	0.00	0.75	0.75	\$150.00
Variances					
TSR 1 Submittal November 17, for the December 1, 2022 TSR	2.00	0.00	0.00	2.00	\$400.00
TSR 2 Submittal December 8, 2022 for December 22, 2022 TSR	2.00	0.00	0.00	2.00	\$400.00
TSR 3 Submittal December 29, 2022 for January 12, 2023 TSR	2.00	0.00	0.00	2.00	\$400.00
TSR 4 Submittal January 19, 2023 for February 2, 2023 TSR	2.00	0.00	0.00	2.00	\$400.00
February 14, 2023 Planning and Zoning	0.00	0.25	1.25	1.50	\$300.00
February 16, 2023 Village Council.	0.00	0.00	0.50	0.50	\$100.00
Administrative Costs (20%)				69.75	\$20,462.50
TOTAL					\$24,555.00

* Cost Estimate only. Applicant shall agree to all hourly fees involved by legal for review of the above-referenced applications.

* Additional costs may be incurred for more TSR reviews if required above what is outlined above.

**Exhibit “A”
Cost Estimate
Planning**

Submittal	Submittal Review (hrs) B/F communication	Total Fee (Hourly Rate \$200.00)
Master Plan/ Special Exception		
October 25, 2022 LPA	0.00	\$0.00
November 17, 2022 Village Council	0.00	\$0.00
Zoning Text - MXS District		
October 25, 2022 LPA	0.00	\$0.00
November 17, 2022 First Reading Village Council	0.00	\$0.00
December 15, 2022 Second Reading	0.00	\$0.00
Preliminary Plat		
November 3, 2022 TSR Submittal for November 28, 2022	8.00	\$1,600.00
December 13, 2022 P&Z	0.00	\$0.00
December 15, 2022 Village Council	0.00	\$0.00
Final Plat		
December 1, 2022 TSR Submittal for January 5, 2022 TSR	8.00	\$1,600.00
January 19, 2023 Village Council	0.00	\$0.00
Easement Abandonment 1		
December 1, 2022 TSR Submittal for January 5, 2022 TSR	6.00	\$1,200.00
January 19, 2023 Village Council	0.00	\$0.00
Easement Abandonment 2		
December 1, 2022 TSR Submittal for January 5, 2022 TSR	6.00	\$1,200.00
January 19, 2023 Village Council	0.00	\$0.00
Comp. Plan Map Amendment		
November 10, 2022 LPA	0.00	\$0.00
November 17, 2022 Village Council First Reading	0.00	\$0.00
December 15, 2022 Village Council Second Reading	0.00	\$0.00
Rezoning		
Third TSR Submittal November 3, 2022 for November 17, 2022 TSR	8.00	\$1,600.00
December 13, 2022 LPA	0.00	\$0.00
December 15, 2022 Village Council First Reading	0.00	\$0.00
January 19, 2023 Village Council Second Reading	0.00	\$0.00
Site Plan		
TSR 1 Submittal November 17, 2022 for the December 1, 2022 TSR	8.00	\$1,600.00
TSR 2 Submittal December 8, 2022 for December 22, 2022 TSR	8.00	\$1,600.00
TSR 3 Submittal December 29, 2022 for January 12, 2023 TSR	8.00	\$1,600.00
TSR 4 Submittal January 19, 2023 for February 2, 2023 TSR	8.00	\$1,600.00
February 14, 2023 Planning and Zoning	0.00	\$0.00
February 16, 2023 Village Council.	0.00	\$0.00
Variances		
TSR 1 Submittal November 17, for the December 1, 2022 TSR	8.00	\$1,600.00
TSR 2 Submittal December 8, 2022 for December 22, 2022 TSR	8.00	\$1,600.00
TSR 3 Submittal December 29, 2022 for January 12, 2023 TSR	8.00	\$1,600.00
TSR 4 Submittal January 19, 2023 for February 2, 2023 TSR	8.00	\$1,600.00
February 14, 2023 Planning and Zoning	0.00	\$0.00
February 16, 2023 Village Council.	0.00	\$0.00
48 Hrs Clerical/Error Review	22.00	\$4,400.00
TOTAL	122.00	\$24,400.00
* Additional costs may be incurred for more TSR reviews if required above what is outlined above.		