

LEASE AGREEMENT – DEBRIS MANAGEMENT SITE

THIS LEASE AGREEMENT (“Agreement”) is made and entered into by and between Carlton Sarasota, LLC, a Florida limited liability company; Davis Sarasota, LLC, a Florida limited liability company; and Pallardy Sarasota, LLC, a Florida limited liability company (collectively referred to as “Owner”); and the City of North Port, Florida a municipal corporation (“City”).

RECITALS

WHEREAS, Owner owns the parcel described in Instrument Number 2015121137 on file with the Sarasota County land records and identified by Sarasota County Property Appraiser Property Identification Number 1093001000 (the “Parcel”); and

WHEREAS, in order to aid in recovery efforts from the damage caused by Hurricane Ian, the City desires to lease a ±10.10 acre portion of the Parcel as depicted on “Exhibit A,” attached and incorporated as part of this Agreement (the “Property”); and

WHEREAS, the City desires to use the Property as a temporary debris storage and reduction location (“DMS”); and

WHEREAS, the City’s expenditures related to debris pickup and management may be eligible for reimbursement by the Federal Emergency Management Agency (“FEMA”); and

WHEREAS, Owner desires to lease the Property to the City for use as a DMS.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein, the parties agree as follows:

1. Effective Date. This Agreement shall become effective on the date the last party approves or executes it, as applicable (“Effective Date”).
2. Recitals. The recitals set forth above are adopted and incorporated in this Agreement by reference.
3. Ownership. The Owner represents and warrants that they own the Parcel in fee simple.
4. Lease of Property.
 - A. Lease. Subject to the terms and provisions of this Agreement, Owner hereby grants the City an exclusive and irrevocable lease to use, enter upon, and occupy the Property, together with rights of ingress and egress, for the permitted uses described in this section (“Lease”). The City bears responsibility for costs related to the exercise of the Lease.
 - B. Permitted Uses. City may exercise the Lease to utilize the Property as a DMS. DMS activities on the Property may include but are not limited to any and all actions necessary in the City’s sole discretion to:
 - (1) Perform reduction of vegetative debris via grinding or any other acceptable means, not to include burning;

- (2) Set-up and prepare the site as a DMS;
 - (3) Accept, sort, and reduce debris types;
 - (4) Manage, maintain, and modify onsite entry and exit roads;
 - (5) Haul off or remove reduced debris;
 - (6) Decommission the DMS;
 - (7) Conduct hydraulic tests, soil tests, surface and groundwater sampling, engineering studies, surveys, appraisal analysis, and other similar studies to assess the suitability of the Property for the City's intended purposes;
 - (8) Conduct activities necessary to create a new site plan, identifying locations for proposed, parking, lay down areas, and site circulation;
 - (9) Utilize equipment the City deems necessary for these activities on the Property; and
 - (10) Perform any other activities the City deems necessary to conduct DMS activities.
- C. Fencing. In keeping with the Property site plan in "Exhibit B," attached and incorporated as part of this Agreement, the City may erect fencing and a gate around the perimeter of the Property. Prior to surrendering the Property, the City will remove all fencing it placed, unless otherwise agreed to by the parties.
- D. Rent.
- (1) The City agrees to pay the Owner rent in the amount of \$10,000.00 (Ten Thousand and no/100) per month, minimum total payment of \$60,000.
 - (2) Except as provided in subsection G(1) below, the City will pay the Owner rent for a minimum period of six months.
 - (3) The monthly rent will be due in advance on the first day of each calendar month, payable to Carlton Sarasota LLC, c/o Lee F. Pallardy, III at 609 E. Jackson St., Ste. 200, Tampa, Florida 33602-4933, or other address the Owner designates in writing.
- E. Covenant of Quiet Enjoyment. The Owner covenants and warrants that upon the City's performance of its obligations herein, the Owner will keep and maintain the City in exclusive, quiet, peaceable, and undisturbed and uninterrupted possession of the Property during the term of this Agreement, subject only to the terms hereof, reservations, restrictions and easements of record, and applicable zoning and other government regulations. The Owner is responsible for all cattle and livestock on the Parcel, as well as any cattle or livestock that may enter the Property.

F. Term.

- (1) The term of this Agreement begins on the Effective Date and ends six (6) months after commencement ("**Initial Term**"). After the Initial Term, unless the City provides fifteen (15) calendar days' notice to the Owner, the Agreement will automatically renew from month-to-month thereafter ("**Renewal Term**").
- (2) The Initial Term and the Renewal Term shall be collectively referred to as the "**Lease Term.**"
- (3) The Lease Term shall not exceed a total of twelve (12) months, unless the parties amend this Agreement in writing.

G. Termination.

- (1) The City may terminate this Agreement at any time upon fifteen (15) calendar days' notice to the Owner, with prorated consideration due to the Owner up to and including the effective date of termination, subject to the minimum payment of \$60,000.00 as noted in subsection D(1) above.
- (2) Following the end of the Initial Term the Owner may terminate this Agreement by providing the City with thirty (30) calendar days' written notice prior to the date of termination.

H. Surrender of Property.

- (1) Upon the earlier of: (i) the end of the Lease Term; or (ii) the effective termination date of this Agreement, the City shall immediately surrender the Property to the Owner.
- (2) Upon surrender the Property shall be free of any equipment belonging to the City or its agents, unless otherwise agreed to by the parties.
- (3) The Parties recognize that the Property is undeveloped land. The City agrees to reasonably restore (but not permanently improve) the Property, except for reasonable wear and tear, loss by fire or other casualty, and acts of God, leaving it unencumbered for future use.
- (4) The Owner will not be responsible for the cost of any repairs to the Property necessitated by the negligent acts or omissions of the City, its directors, officers, agents, employees, licensees, or invitees.

5. Insurance. The City will provide Owner a Certificate of Insurance naming the Owner as a loss payee on the City's general liability policy. The City will also provide Owner any proof of insurance the City has on file from its contractor(s) that will be performing work at the Property.

6. Default and Remedies.

A. The City's Default. The occurrence of any one of the following events will constitute a default of the City:

- (1) Abandonment of the Property for a period of thirty (30) consecutive days;

- (2) Failure to pay rent for a period of forty-five (45) days after the due date;
 - (3) Failure to perform any condition or obligation in this Agreement; or
 - (4) Failure to perform or observe any other condition or obligation of this Agreement and to cure the failure within thirty (30) days following the Owner's written notice to the City.
- B. The Owner's Default. The Owner will be in default if the Owner fails to perform or observe any condition or obligation of this Agreement within thirty (30) days following the City's written notice to the Owner, provided that:
- (1) If the nature of the default reasonably requires more than thirty (30) days, the Owner will not be in default of this Agreement if the Owner has promptly commenced and is diligently pursuing a cure; and
 - (2) If the nature of the default poses an imminent danger to persons or property, then the period of time for cure will be a reasonable period of time in light of the circumstances.
- C. The Owner's Remedies. In the event of the City's default, the Owner may take the following action:
- (1) Terminate this Agreement in writing with fifteen (15) days' notice to the City;
 - (2) Re-enter the Property and terminate the City's right of possession of the Property;
 - (3) Cure the default on behalf of the City and the City will pay the reasonable costs of the cure upon written demand; and/or
 - (4) Pursue any other remedy available under the law, including the right to accelerate all rents due for the minimum amount as noted within subsection D(1) above, and to file suit for the amount due.
- D. No Waiver of the Owner's Remedies. The Owner's acceptance of any rent payment in an amount less than the amount due and owing, and/or any other act of forbearance concerning any breach or default by the City, will not constitute a waiver of the Owner's right to collect the full amount due or pursue remedies for default, including proceeding with an eviction claim. The Owner's acceptance of rent, partial rent, and/or any act of forbearance or waiver of any breach or default of this Agreement by the City will not be construed as a continuing waiver or consent to any subsequent breach, or default by the City and will not bar the Owner's right to demand strict compliance with that provision or any other provision of this Agreement. No course of dealing between the Owner and the City will constitute a waiver of any of the Owner's rights or any of the City's obligations as due hereunder.
- E. The City Remedies. In the event of the Owner's default, the City has the following remedies:
- (1) Cure the default on behalf of the Owner, and the Owner will pay the reasonable costs of the cure upon written demand; and/or

(2) Pursue any other remedy available under the law.

F. Mitigation. All parties agree to mitigate their damages upon default.

7. Notices. Except as specified elsewhere in this Agreement, all notices provided for in the Agreement must be in writing and transmitted by FedEx, UPS, or by certified mail, return receipt requested to the following. A party may update its notice information by providing written notice to the other party.

For Owner:

Carlton Sarasota, LLC
Davis Sarasota, LLC
Pallardy Sarasota, LLC
c/o Lee F. Pallardy, III
4143 Moores Lake Road
Dover, FL 33527

For the City:

City of North Port, Florida
Public Works Director
6644 W. Price Blvd.
North Port, FL 34291

with a copy to:

City of North Port, Florida
City Attorney's Office
4970 City Hall Blvd.
North Port, Florida 34286

8. INDEMNIFICATION; ASSUMPTION OF RISK.

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE OWNER ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER SUCH FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLIGENCE OR OMISSIONS OF THE OWNER, OR OWNER'S OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE OWNER IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THE AGREEMENT. THE AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.
- B. CITY AGREES TO BE RESPONSIBLE NOT TO EXCEED THE STATUTORY LIMITS SET FORTH IN SECTION 768.28, FLORIDA STATUTES, FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS THAT RESULT IN CLAIMS OR SUITS AGAINST THE OWNER RESULTING FROM PERFORMANCE OF THIS AGREEMENT, AND AGREES TO BE LIABLE NOT TO EXCEED THE AFOREMENTIONED STATUTORY LIMITS FOR ANY DAMAGES PROXIMATELY CAUSED BY SAID NEGLIGENT ACTS OR OMISSIONS RESULTING FROM PERFORMANCE OF THIS AGREEMENT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED TO BE A WAIVER OF ANY PROTECTIONS UNDER SOVEREIGN IMMUNITY, SECTION 768.28, FLORIDA STATUTES, OR ANY OTHER SIMILAR PROVISION OF LAW. NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS CONSENT TO BE SUED BY THIRD PARTIES IN ANY MATTER ARISING OUT OF THIS OR ANY OTHER AGREEMENT.

- C. THE CITY COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, ITS SUCCESSORS AND ASSIGNS, INDIVIDUALLY OR COLLECTIVELY FROM AND AGAINST LIABILITY FOR ANY FINES, CLAIMS, SUITS, DEMANDS, ACTIONS OR CAUSES OF ACTION ASSERTED FOR PERSONAL INJURY OR DEATH, OR PROPERTY DAMAGE IN ANY WAY ARISING OUT OF OR RESULTING FROM ANY ACTIVITY OR OPERATION OF THE CITY, OR ITS ELECTED OFFICIALS, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CITY IN THE PERFORMANCE OF THIS AGREEMENT, AND THE CITY FURTHER AGREES TO PAY ALL EXPENSES IN DEFENDING AGAINST ANY CLAIMS MADE AGAINST THE OWNER, PROVIDED, THAT THE CITY SHALL NOT BE LIABLE FOR ANY INJURY, DAMAGE OR LOSS OCCASIONED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OWNER, ITS AGENTS OR EMPLOYEES. THE CITY'S LIABILITY SHALL NOT EXCEED THE STATUTORY LIMITS SET FORTH IN SECTION 768.28, FLORIDA STATUTES.
- D. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).
- E. The City's Rights, Privileges, and Immunities. Nothing in this Agreement will be deemed to affect the rights, privileges and immunities of the Owner as set forth in Florida Statutes Section 768.28. This Agreement does not constitute a waiver of sovereign immunity or consent by the City to suit by third parties.
- F. Assumption of Risk. All personal property the City or its agents bring to or uses at the Property shall be at the risk of the City. The Owner shall not be liable to the City for any loss or damage to personal property by reason of theft, negligence, or other loss, or due to any *force majeure* event, as defined in this Agreement.
- G. Survival of Covenants. The terms of this section shall survive the termination of this Agreement.
- H. Cooperation and notice. The parties will provide all available information and assistance that any other party may reasonably require regarding any claim. In the event of a claim, a party must promptly notify the other parties in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided for receipt of notices in this Agreement.
9. Force Majeure. Should performance of any obligation (other than payment obligations) created under this Agreement become illegal or impossible by reason of:
- A. A strike or work stoppage, unless caused by a negligent act or omission of any Party;
 - B. An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
 - C. An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;

- D. A declared emergency of the federal, state, or local government; or
- E. Any other cause not enumerated that is beyond the reasonable control of the non-performing party;

then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to eliminate the cause of force majeure.

10. Miscellaneous.

- A. Authority to Execute Agreement. The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- B. Binding Effect/Counterparts. By the signatures affixed hereto, the Parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida.
- D. No Agency. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that no provision contained herein, or any acts of the Parties shall be deemed to create any relationship between them other than that as detailed herein.
- E. Severability. In the event any court shall hold any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant shall not be construed as a waiver of a subsequent breach by the other party.
- F. Headings. The descriptive titles appearing in each respective paragraph are for convenience only and are not a part of this Agreement and do not affect its construction.
- G. Complete Agreement. This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the Parties, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.
- H. Amendment. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both Parties and incorporated into this Agreement. Any amendments changing City's financial obligations under this Agreement shall require approval by the City

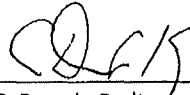
Commission or by the City Manager in the proper use of emergency authority. The City Commission hereby authorizes the City Manager or City Manager's authorized designee to approve and execute all Agreement amendments on behalf of City that do not change the City's financial obligations under this Agreement.

- I. Assignment. The Owner shall not assign this Agreement or any right or responsibility herein unless with the written consent of the City.
- J. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services.
- K. No Obligation of Federal Government. The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the Owner, the City, or any third party pertaining to any matter resulting from this Agreement.

(This space intentionally left blank; signature pages to follow)

This Agreement has been executed and delivered on the dates set forth below.


OWNER
CARLTON SARASOTA, LLC

By: 
C. Dennis Carlton
Manager

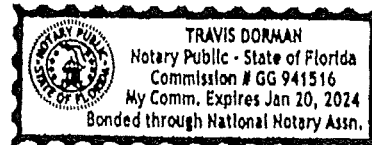
ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 9th day of November, 2022, by C. Dennis Carlton, as Manager for Carlton Sarasota, LLC.

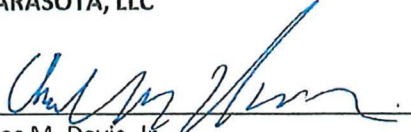

Notary Public

Personally Known OR Produced Identification _____
Type of Identification Produced _____



(Additional signature pages to follow)

OWNER
DAVIS SARASOTA, LLC

By: 
Charles M. Davis, Jr.
Manager

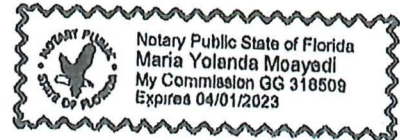
ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 8th day of November, 2022, by Charles M. Davis, Jr., as Manager for Davis Sarasota, LLC.

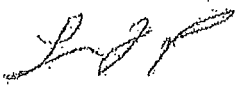

Notary Public

Personally Known OR Produced Identification _____
Type of Identification Produced _____



(Additional signature pages to follow)

OWNER
PALLARDY SARASOTA, LLC

By: 
Lee F. Pallardy, III
Manager

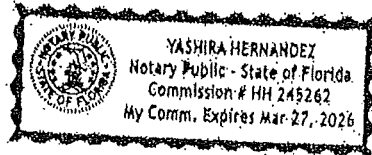
ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 4th day of NOV, 2022, by Lee F. Pallardy, III, as Manager for Pallardy Sarasota, LLC.


Notary Public

Personally Known _____ OR Produced Identification
Type of Identification Produced DRIVERS LICENSE



(Additional signature page follows)

Executed by the City Manager in his emergency authority pursuant to Ordinance No. 2022-30 on November 8, 2022.

CITY OF NORTH PORT, FLORIDA

By: 
A. Jerome Fletcher II, ICMA-CM, MPA
City Manager

ATTEST

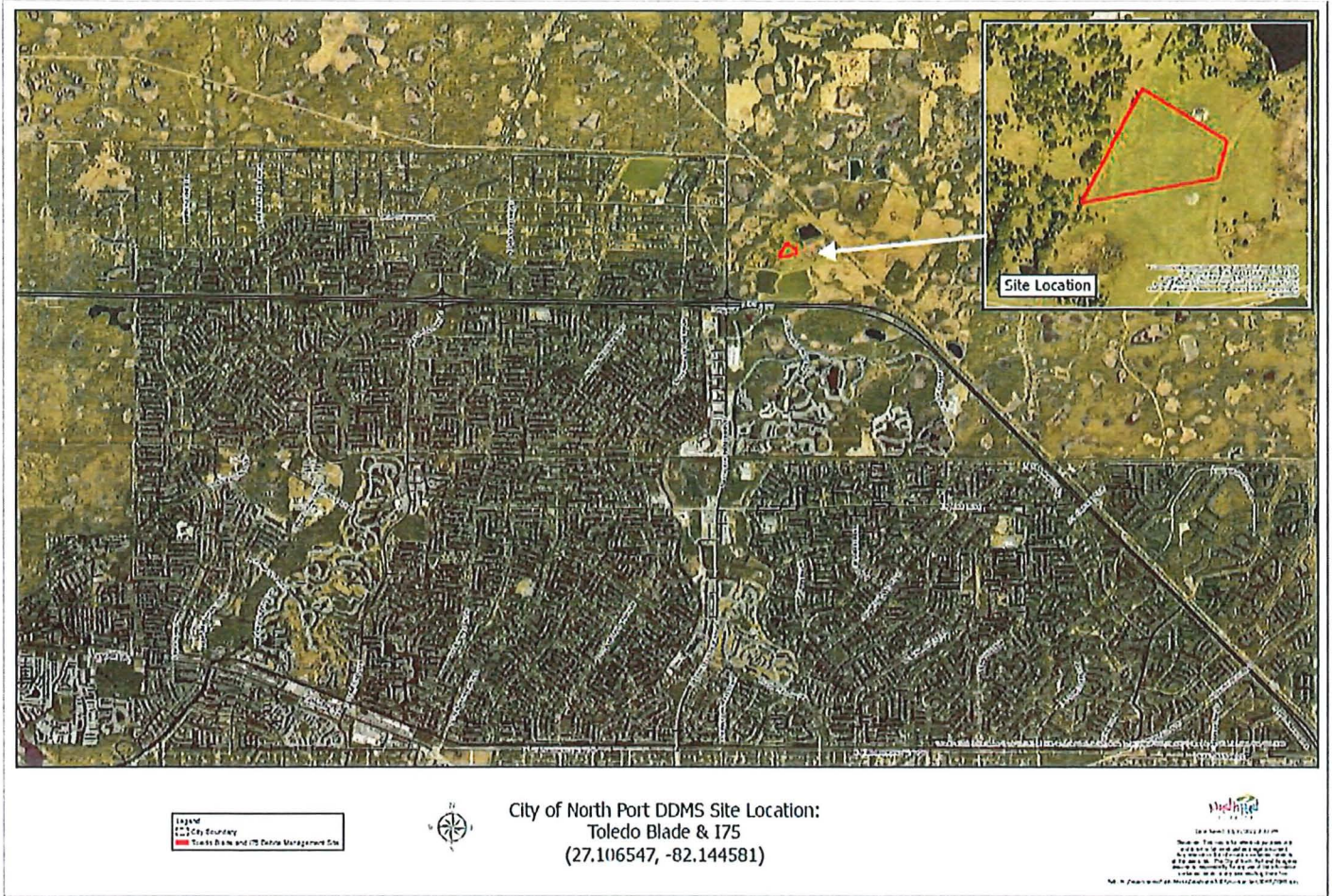

Heather Faust, MMC
City Clerk

APPROVED AS TO FORM AND CORRECTNESS


Amber L. Slayton, B.C.S.
City Attorney

EXHIBIT A

PROPERTY DEPICTION





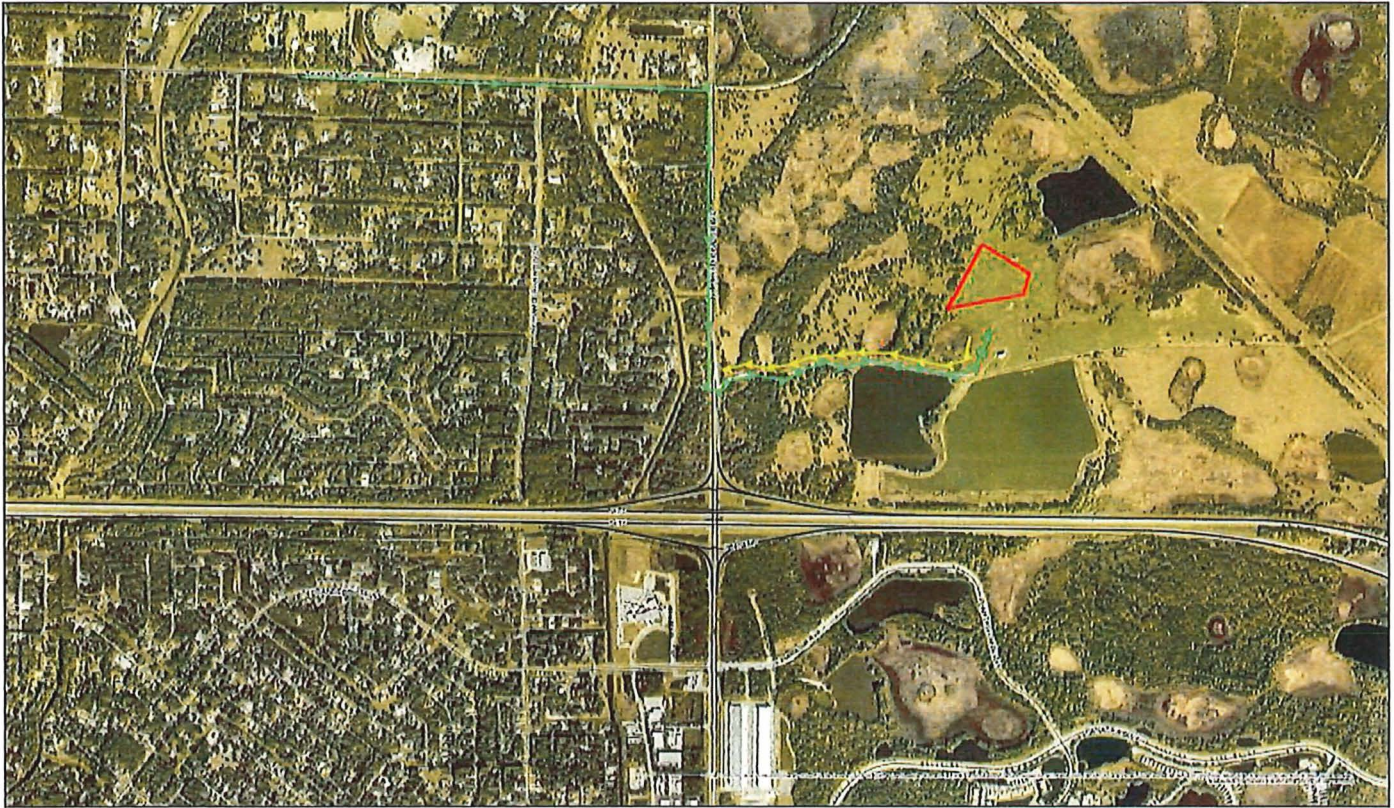
Legend
■ Solid Red Polygon
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City of North Port DDMS Site Location:
Toledo Blade & I75
(27.106547, -82.144581)



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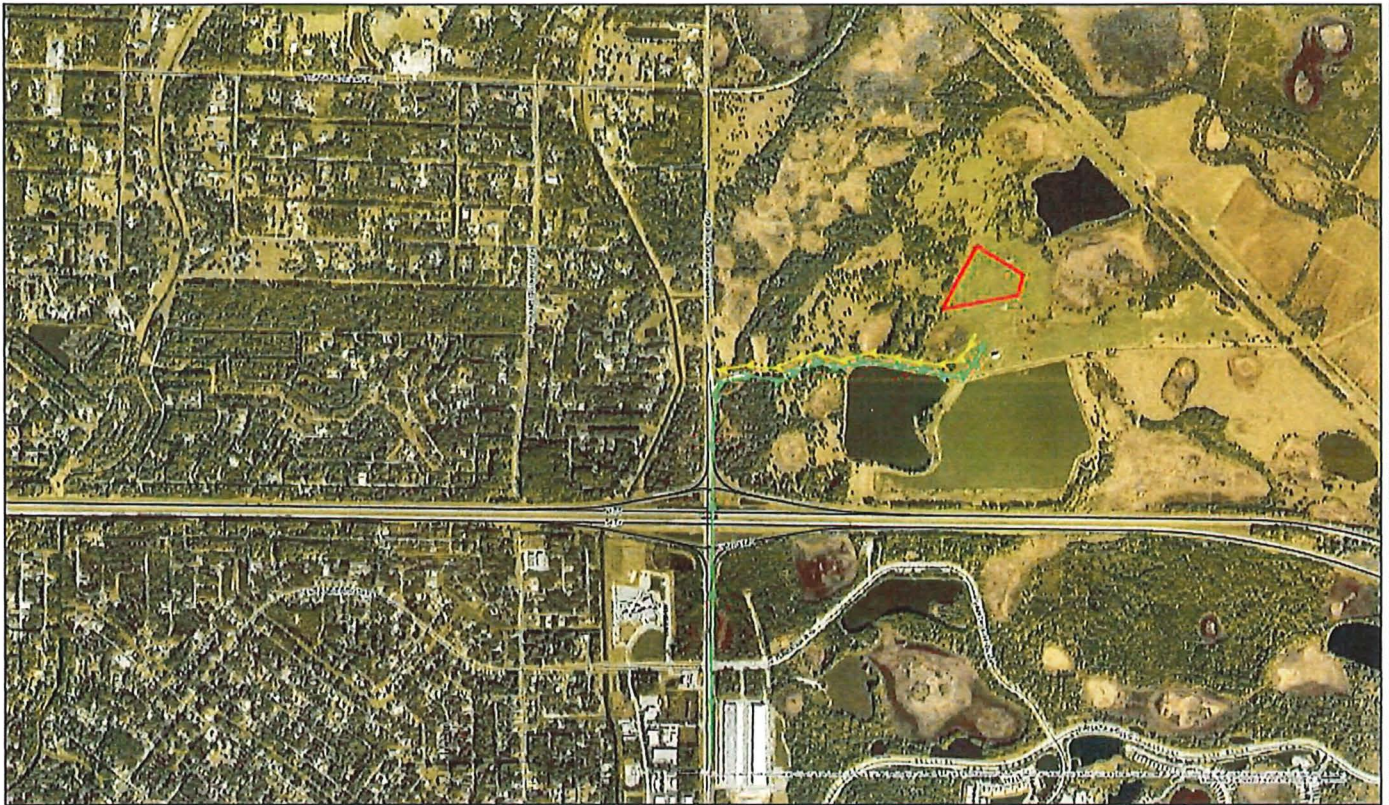
- DDMS Site
- Traffic Flow #1
- Traffic Flow #2
- Traffic Flow #3



City of North Port DDMS Site Location:
 Toledo Blade & 175
 (27.106547, -82.144581)
 Traffic Flow #1



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Legend

- City of North Port
- City of North Port
- City of North Port



City of North Port DDMS Site Location:
Toledo Blade & 175
(27.106547, -82.144581)
Traffic Flow #2



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