

ACCEPTED ALL COUNTY CHANGES FOR CLARITY PURPOSES, CITY REVISIONS 9/2/2014 (clean)

Prepared by:  
Catherine D. Reischmann, Esq.  
Asst. City Attorney  
P.O. Box 2873  
Orlando, FL 32802-2873

Return to:  
City Clerk  
City of Palm Coast  
160 Cypress Point Pkwy, B-106  
Palm Coast, FL 32164

**INTERLOCAL AGREEMENT**  
**BETWEEN THE CITY OF PALM COAST AND FLAGLER COUNTY RELATING TO THE**  
**DEVELOPMENT OF UNINCORPORATED AND INCORPORATED LANDS IN AND**  
**AROUND THE FLAGLER COUNTY AIRPORT**

**THIS INTERLOCAL AGREEMENT** (hereinafter called "Agreement") is made and entered into this \_\_\_\_\_ day of September 2014, by and between the **County of Flagler** (hereinafter called "COUNTY"), a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Blvd., Building 2, Suite 302, Bunnell, Florida 32110, and the **City of Palm Coast** (hereinafter called "CITY"), a municipal corporation of the State of Florida, whose mailing address is 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164. Collectively hereafter they may be referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, the County Airport began as a former naval base during WW II; and

**WHEREAS**, in February 1947 the Flagler County Board of County Commissioners enacted a resolution accepting from the War Assets Administration the Flagler County Airport; and

**WHEREAS**, the COUNTY owns and operates the Flagler County Airport on property described in Exhibit "A" ("Airport"); and

**WHEREAS**, the COUNTY has developed and maintained the Airport consistent with the adopted 1987 Airport Master Plan and Airport Layout Plan (“ALP”) , through the latest 2006 Plan, (collectively, the “Airport Master Plans”) and continues to utilize and update both documents to guide the use, development, and maintenance of the Airport; and

**WHEREAS**, the COUNTY’s planning, use, development and maintenance of the Airport are required to comply with applicable standards and regulations of the Federal Aviation Administration and the Florida Department of Transportation (hereafter “federal and state airport standards”) and the COUNTY’s activities for such are performed to achieve compliance; and

**WHEREAS**, the Parties cooperated in the development of the 2009 Palm Coast/Flagler County Airport Area Master Plan for the area around the Airport (hereinafter called “Airport Area Master Plan”) to develop a vision and guidelines for the future growth of the areas surrounding the Airport; and

**WHEREAS**, the Parties agree that this Agreement further supports the Airport Master Plans and the Airport Area Master Plan; and

**WHEREAS**, the Parties agree that development of the lands in and around the Airport require coordination and cooperation between the CITY and COUNTY in order to ensure that economic development and diversification of the tax base is encouraged, and the area develops in harmony with the existing developed areas and adopted land development standards, all in a manner to comply with federal and state airport standards; and

**WHEREAS**, the Airport began receiving potable water and sanitary sewer service, prior to the incorporation of the CITY, from Palm Coast Utility Corporation and later Florida

Water Services, Inc.; and

**WHEREAS**, the COUNTY owns approximately 55 acres of land (hereinafter called the “Site”) abutting the southwest side of the Airport and adjacent to the municipal boundary of the City of Palm Coast, as described in Exhibit “B”; and

**WHEREAS**, the COUNTY has leased a portion of the Site to the Florida Army National Guard for the construction of an Armed Forces Reserve Center; and

**WHEREAS**, the Parties agree that construction of an Armed Forces Reserve Center will provide benefits to the local community, including, but not limited to: job creation, direct and indirect return to the community diversifying the local economy, and support in times of natural and man-made disasters; and

**WHEREAS**, the COUNTY has invested over \$1.5 million dollars in Airport infrastructure (roads, stormwater and utilities) through grants and other non-property tax funds to further develop the Airport infrastructure and attract and to support economic development; and

**WHEREAS**, consistent with the Airport Master Plans, the COUNTY continues to work towards developing the Airport Commerce Centre, which is an industrial/business park consisting of approximately 150 acres +/-, located on the south side of the Airport, with access from Belle Terre Boulevard and which is shown as part of Exhibit “A”; and

**WHEREAS**, the Airport Commerce Centre will further job creation, support the Airport, and diversify the local economy; and

**WHEREAS**, the COUNTY with assistance from the CITY and other economic partners has successfully attracted a company willing to locate in the Airport Commerce

Centre and provide more than 300 new high paying jobs, contingent upon the ability to provide the necessary infrastructure to support this economic development; and

**WHEREAS**, the CITY agree to waive right-of-way application/permit fees for road and utility improvements related to this Agreement; and

**WHEREAS**, the COUNTY is currently working to fast track the funding, permitting, and construction of more than \$2 million dollars of critical infrastructure on and off the Site with assistance from the CITY; and

**WHEREAS**, both Parties understand that this infrastructure will further support the Armed Forces Reserve Center and other economic development opportunities for the CITY and the COUNTY; and

**WHEREAS**, the COUNTY had an Airport Industrial/Business Park plan with the water and sewer utility plans as part of the Airport Master Plans; and

**WHEREAS**, the CITY agrees to provide potable water and sanitary sewer services as the utility provider to the Site and the Airport Commerce Centre; and

**WHEREAS**, the COUNTY and CITY desire to provide recreational opportunities to citizens on a portion of the Site by creating a City Park on property described in Exhibit "H" (hereinafter called "City Park"); and

**WHEREAS**, the COUNTY agrees to the granting of a "County deed" to the CITY for the City Park parcel within ninety (90) days of the issuance of a Certificate of Occupancy for the Armed Forces Reserve Center.

**NOW, THEREFORE**, the Parties hereto, for and in consideration of the premises and mutual covenants, terms and conditions hereinafter contained, hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The foregoing recitals are true and correct and are fully incorporated herein by this reference.

**SECTION 2. REVIEW OF DEVELOPMENT PLANS.** The COUNTY and the CITY both understand the importance of coordination on development and ensuring an aesthetically pleasing appearance of the properties in and around the Airport. Additionally, each party is bound within its respective Comprehensive Plan to work jointly together for the public good. To that end, the Parties agree to cooperate on any building / site plan development approvals for developments within the area depicted on Exhibit "C" the "Joint Development Review Area".

Such cooperation shall consist of the non-jurisdictional party's review and comment on submitted development plans, but with the ultimate approval and permitting authority being vested with the jurisdictional permitting authority. In addition, each party agrees to make staff available on an as needed basis to help coordinate and provide input on any differences in the other's land development regulations for internal COUNTY and CITY joint planning and projects in the Joint Development Review Area.

**SECTION 3. TRANSPORTATION IMPROVEMENTS.**

(a) The COUNTY agrees, and will strive to work with the CITY, to construct or cause to be constructed the off-site transportation improvements listed below in connection with development of the Site and the Airport Commerce Centre, in locations as generally depicted on Exhibit "D". Said improvements to CITY streets shall be constructed to CITY standards, and require CITY approval pursuant to the CITY's standard regulation, which approval will not be unreasonably withheld. The improvements are:

1. The construction of a modified northbound right hand turn lane on Belle Terre Boulevard at the driveway/road entrance prior to a Certificate of Occupancy being issued on the Armed Forces Reserve Center or the issuance of a Certificate of Occupancy resulting in the occupancy of over 40,000 square feet of space within the Airport Commerce Centre, whichever shall occur first.
2. The enhancement of the modified northbound right hand turn lane on Belle Terre Boulevard at the driveway/road entrance into a full right-hand decel lane, to the extent physical design conditions permit, prior to the issuance of a Certificate of Occupancy resulting in the occupancy of over 80,000 square feet of space within the Airport Commerce Centre.
3. The construction of a full southbound left hand turn lane on Belle Terre Boulevard at the driveway/road entrance prior to a Certificate of Occupancy being issued on the Armed Forces Reserve Center or the issuance of a Certificate of Occupancy resulting in the occupancy of over 40,000 square feet within the Airport Commerce Centre, whichever shall occur first.
4. If right-of-way is available, or through cooperation with the CITY additional right-of-way can be made available at no cost to the COUNTY, the construction of a full northbound right hand turn lane on Belle Terre Boulevard on the south side of SR 100, at the intersection of SR 100 and Belle Terre Boulevard within 36 months of either a Certificate of Occupancy being issued for the Armed Forces Reserve Center or the issuance of a Certificate of Occupancy resulting in the occupancy of over 40,000 square feet of space within the Airport Commerce Centre, whichever shall occur first. If both the

Armed Force Reserve Center and 40,000 square feet of space or more within the Airport Commerce Centre are issued a Certificate of Occupancy, the full northbound right hand turn lane shall be in place no later than 12 months following the issuance of the Certificate of Occupancy, providing that the required right of way is available, or through the cooperation with the CITY additional right of way can be made available, at no cost to the COUNTY. If the right-of-way is not available during this timeframes indicated above, but later becomes available, the full northbound right hand turn land shall be in place no later than 18 months from when the right-of-way becomes available.

- (b) The above transportation improvements shall be sufficient transportation mitigation for all the potential development on the Site and up to 80,000 square feet at the Airport Commerce Centre. For additional development, if and when, the level of service on Belle Terre Parkway from US1 to SR100 or the intersection of Belle Terre Parkway and SR100 is failing, the COUNTY shall provide a traffic analysis for ultimate build-out of the Airport Commerce Centre, including development already constructed. The COUNTY and the CITY shall jointly determine if additional traffic analysis/study is necessary and determine whether additional improvements are necessary based on the calculated impacts from the ultimate build-out of the Airport Commerce Centre. The COUNTY and CITY should jointly cooperate to plan and fund improvements identified in the traffic analysis/study and necessitated by the impacts created from the build out of the Airport Commerce Centre. Both Parties acknowledge that developments located in unincorporated Flagler County are not subject to CITY concurrency requirements.

#### **SECTION 4. UTILITY SERVICES.**

- (a) The CITY agrees to provide potable water and sanitary sewer service to the Site and the Airport Commerce Centre in accordance with the following agreements: For property within the Airport, including the Airport Commerce Centre, such service shall be in accordance with the existing City/County Airport Utility Agreement as set forth in Exhibit "E". No property described herein shall be required to annex into the City of Palm Coast with the exception of the City Park, which may be annexed by the CITY once transferred to the CITY.
- (b) The COUNTY will construct or cause to be constructed the potable water and sanitary sewer service improvements as generally depicted on drawings shown in Exhibit "F" (hereinafter called the "Water and Sewer Improvements").
- (c) Upon completion of the construction of the Water and Sewer Improvements, the COUNTY will provide utility easements to the CITY over the portion of those improvements located as follows: For the water line, from the driveway/road entrance right-of-way from Belle Terre Boulevard right of way up to the point of demarcation/service following the Site and before the canal; and for the sewer line and master pump station, the driveway/road entrance right-of-way up to the point of demarcation/service immediately following the master pump station to the north, but before the canal. The COUNTY will also contribute to the CITY any easements necessary for the master pump station site, pipelines and access to the master pump station. The COUNTY agrees to provide the CITY with easements in a form consistent with the easement grant form contained in the Beachside Sewer Interlocal Agreement substantially similar to Exhibit "G".

- (d) Amendments to the precise requirements for the Water and Sewer Improvements, the final terms and conditions of the easements, the points of demarcation/service, as well as the master pump station design and location may be approved, in writing, by the County Administrator and the City Manager. If an agreement cannot be reached, an amendment to this Interlocal Agreement will be required. However, in no case shall the CITY be obligated to construct the Water and Sewer Improvements.
- (e) Once construction is complete, the COUNTY shall dedicate per CITY requirements using a bill of sale, the facilities west/south of the points of demarcation/service and the CITY shall maintain these facilities. The COUNTY shall maintain the facilities east/north of the points of demarcation/service.
- (f) The Armed Forces Reserve Center and any other developments on the Site, shall be direct CITY customers, paying normal and customary CITY utility service fees/charges, directly to the CITY.
- (g) It is understood by all the Parties that the Water and Sewer Improvements will be sized and extended from the point of demarcation/service into the Airport to serve up to 150 upland acres within the Airport, including the Airport Commerce Centre.
- (h) If the Armed Forces Reserve Center is not constructed, the COUNTY agrees to construct the Water and Sewer Improvements and contribute the specified portions to the CITY, as per section 4(b) and (c) above, if and when future development occurs in order to service the Site. Construction of any improvements necessary within the Airport, including the Airport Commerce Centre, may proceed in advance of any construction within the Site.

- (i) For Capital Facility Fee/Impact Fees, the COUNTY shall pay the CITY Capital Facility Fees for the increases in water and sewer service capacity required as demands on the Airport property increases. The COUNTY shall pay the then CITY Capital facility rate per gallon taking down such capacity in 1,000 gallon increments in accordance with Exhibit "E". Direct customers on the Site shall pay the appropriate Utility Capital Facility Fees directly to the CITY.
- (j) All Water and Sewer Improvements will be constructed to CITY standards with all required Federal and State permits. Any facilities being dedicated to the CITY will require CITY approval, which approval will not be unreasonably withheld. For proposed water and sewer improvements not being dedicated to the CITY, the COUNTY will provide copies of the construction plans to the CITY for review and comment to assure all facilities are constructed to current CITY standards and specifications in effect at that time.

**SECTION 5. CITY PARK.**

- (a) The CITY and COUNTY will cooperate on the development of the plans and any development approvals within the COUNTY for the City Park until such time as the City Park property is transferred to the CITY. Following receipt of the property by the CITY, any development plans on the City Park parcel shall be provided to the COUNTY in a timely manner for review and comment, at a minimum of 14 days prior to any permit/approval/workshop submittal to the St. John's Water Management District or the City of Palm Coast Council.
- (b) The COUNTY will also work jointly with the Florida Army National Guard in good faith to rough grade the City Park prior to the transfer to the CITY, with the Parties

acknowledging that such construction is contingent solely upon federal approvals and guidelines.

- (c) The COUNTY will transfer ownership of the City Park to the CITY by a County deed within ninety (90) days of the issuance of the Certificate of Occupancy for the Armed Forces Reserve Center.
- (d) The City Park parcel shall be provided to the CITY with deed restrictions restricting the property for utility or recreational uses only, imposing a maximum height restriction of 35 feet, and requiring any above-ground object over 12 feet proposed to be located anywhere on the City Park, or any part thereof, to receive prior written approval pursuant to Title 14, Code of Federal Regulations Part 77 from the Federal Aviation Administration and the Florida Department of Transportation, Division of Aviation, before installation and/or construction of such improvements. The deed shall contain a reverter clause requiring the City Park property to revert back to the COUNTY in the event the property is no longer used for utility or recreational uses, or is utilized for non-utility and non-recreational purposes, except as otherwise specifically approved by the COUNTY in writing. The City shall ensure all improvements made to the City Park property comply with FDOT or FAA Title 14, Part 77 Compliance Standards.
- (e) The COUNTY shall, at the time of conveyance to the CITY, attempt to provide the City Park property to the CITY free from any liens and new encumbrances, realizing that several easements/encumbrances currently exist for drainage, that deed restrictions by ITT exist, and further restrictions may occur related to the COUNTY's lease agreement with the Florida Army National Guard as it currently

exists and with modifications in the future after approval of this Agreement. The COUNTY shall attempt to use good faith efforts to make the CITY aware of any known liens and encumbrances and minimize the same to allow for the CITY's intended use. However, in any case, the CITY shall be fully responsible for conducting its own due diligence regarding any liens, debts, claims, and encumbrances prior to accepting the City Park property.

(f) Right of Entry. The COUNTY acknowledges and consents to the CITY's right for its employees and agents to enter upon the City Park parcel prior to conveyance to the CITY for the purpose of scientific investigation, surveying, and for the purpose of inspecting and determining compliance with the terms of this Agreement. The CITY shall fully indemnify the COUNTY for the safety and actions of its employees and agents, and its employees and agents shall not otherwise interfere with the development of the proposed City Park property until such time as it is transferred.

(g) The CITY agrees that it will assume all responsibilities for the City Park upon conveyance by the COUNTY and reserves the right to annex the City Park property upon receipt. The COUNTY shall not oppose annexation of the City Park once deeded to the CITY.

#### **SECTION 6. STORMWATER**

(a) The CITY and COUNTY will continue to cooperate to ensure that stormwater runoff from development within the Airport Commerce Centre and the Armed Force Reserve Center does not exceed the capacity of the City's Stormwater System and other systems. The COUNTY will continue to obtain any necessary

St. Johns River Water Management District (SJRWMD) permits for development of the Site and the Airport Commerce Centre and comply with related permit conditions.

**SECTION 7. FIRE/EMS**

(a) The CITY and COUNTY will continue to cooperate to provide Fire and Emergency Medical Service (EMS) in and around the Airport in the most efficient, cost effective manner. To that end, prior to construction of a fire station by either the CITY or COUNTY south of State Road 100 on Belle Terre Boulevard, the CITY and COUNTY shall jointly study how to effectively and efficiently provide Fire/EMS services in the areas in and around the Airport, minimize response times, and limit the duplication of services where possible.

**SECTION 8. INSURANCE/INDEMNIFICATION/EMPLOYEE STATUS.**

The Parties to this Agreement shall, provide, maintain and keep in force a program of insurance or self-insurance covering its liabilities as prescribed by Section 768.28, *Florida Statutes*. Nothing in this Agreement shall be deemed as a waiver of sovereign immunity of any of the parties beyond any statutorily limited waiver which may have been or may be adopted by the Florida Legislature, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claims which would otherwise be barred under the doctrine of sovereign immunity. The parties agree that nothing contained in this Agreement shall be construed or interpreted as denying to either party any legal remedy or defense available under the laws of the State of Florida. The waiver of a provision herein or a right available to a party shall not operate as a further waiver or continuing waiver of said provision or right or any other

provision of this Agreement. Each of the Parties agrees to provide the other with written notice of any claim subject to these provisions within ten (10) days of its receipt of notice that a claim exists. The Parties agree to cooperate fully, subject to the provisions hereof, in the defense of any such claim. Notice of claim shall be deemed to be given on the date of mailing as provided in Section 8 of this Agreement. The term "claims", as used in this Section, shall include all demands, damages, expenses, fees, penalties, suits, proceedings or actions. Persons employed by one party in the performance of services and functions pursuant to this Agreement shall have no claim against any other party hereto for salary, pension, workers' compensation, civil service, or other employee rights or privileges.

**SECTION 9. NOTICES.**

Except for the coordination between the CITY and the COUNTY where such coordination consists only of review and comment on submitted plans through processes which will continue as presently established, all notices, consents, approvals, waivers and elections that any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be considered sufficiently made or given only when mailed by Certified Mail, postage prepaid, return receipt requested, addressed as follows to the parties listed below or to such other address as any party hereto shall designate by like notice given to the other party:

COUNTY: Flagler County  
Attn: County Administrator  
1769 East Moody Boulevard, Building 2, Suite 302  
Bunnell, Florida 32110

CITY: City of Palm Coast  
Attn: City Manager  
160 Cypress Point Parkway, Suite B-106

Palm Coast, Florida 32164

Notices, consents, approvals, waivers and elections given or made as provided herein shall be deemed to have been given and received on the date of the mailing thereof.

**SECTION 10. ENTIRE AGREEMENT, AMENDMENT AND ASSIGNMENT.**

This Agreement constitutes the entire agreement of the parties, and there are no understandings dealing with the subject matter of this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except in writing signed by the parties hereto or their authorized representatives. No party shall assign the Agreement, nor any interest herein, without the express written consent of the other parties.

**SECTION 11. INTERPRETATION.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the CITY and the COUNTY have contributed substantially and materially to the preparation hereof.

**SECTION 12. EFFECTIVE DATE.** For all purposes of this Agreement, the Effective Date hereof shall mean the date when this Agreement is recorded with the Clerk of the Circuit Court in the Official Records of Flagler County.

**SECTION 113. FORCE MAJEURE.** No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them singularly, is delayed or prevented by *force majeure*. *Force majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any emergency

declaration under state law, or any act of God or any cause whether of the same or different nature, existing or future, provided that the cause, whether or not enumerated in this Section, is beyond the control and authority and without the fault or negligence of the party seeking relief under this Section. The maximum relief granted to any party under this Section shall be the tolling of time for the duration of the *force majeure*.

**SECTION 14. TIME OF THE ESSENCE.** Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

**SECTION 15. BINDING EFFECT.** Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.

**SECTION 16. RECORDING.** The COUNTY shall be responsible for the recording of this Agreement in the Public Records (Land Records) of Flagler County, Florida. The costs of the recording shall be borne equally by the parties.

**SECTION 17. CAPTIONS/EXHIBITS.**

(a) The headings or captions of the sections and subsections contained in this Agreement are used for convenience and reference only, and do not, in themselves, have any legal significance and shall not be afforded any. They are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement, or any provision hereto.

(b) The exhibits to this Agreement are hereby incorporated into this Agreement and form an integral part of this Agreement.

**SECTION 18. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

**SECTION 19. EXHIBITS.** All Exhibits to this Agreement are attached hereto and by reference made a part thereof.

EXHIBIT "A" - AIRPORT PROPERTY DRAWING and LEGAL DESCRIPTION

EXHIBIT "B" - 55 acre "SITE" SURVEY/DRAWING AND LEGAL DESCRIPTION

EXHIBIT "C" MAP OF JOINT DEVELOPMENT REVIEW AREA

EXHIBIT "D" - DRAWINGS OF OFF SITE TRANSPORTATION IMPROVEMENTS

EXHIBIT "E" -EXISTING CITY/COUNT AIRPORT UTILITY AGREEMENT

EXHIBIT "F" - POTABLE WATER AND SANITARY SEWER UTILITY IMPROVEMENTS

EXHIBIT "G" - WATER AND SEWER EASEMENTS

EXHIBIT "H" – CITY PARK -SURVEY/MAP OF PARCEL A

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SIGNATURE PAGES FOLLOW

**INTERLOCAL AGREEMENT  
SIGNATURE PAGE**

**FLAGLER COUNTY**

By: \_\_\_\_\_  
George Hanns Chair

Flagler Board of County Commissioners

Date executed: \_\_\_\_\_

*ATTEST:*

\_\_\_\_\_  
Gail Wadsworth, Clerk of the  
Circuit Court and Comptroller

Approved as to form by:

\_\_\_\_\_  
Albert J. Hadeed, County Attorney

**INTERLOCAL AGREEMENT  
SIGNATURE PAGE**

**CITY OF PALM COAST**

By: \_\_\_\_\_  
Jon Netts, Mayor

City of Palm Coast

Date executed: \_\_\_\_\_

*ATTEST:*

\_\_\_\_\_  
City Clerk

Approved as to form and content

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.

EXHIBIT "A"  
(AIRPORT PROPERTY DRAWING and LEGAL DESCRIPTION)

EXHIBIT "B"  
(55 acre SITE DRAWING AND LEGAL DESCRIPTION)

EXHIBIT "C"  
(MAP OF JOINT DEVELOPMENT REVIEW AREA)

EXHIBIT "D"  
[DRAWINGS OF OFF SITE TRANSPORTATION IMPROVEMENTS]

EXHIBIT "E"  
[EXISTING CITY/COUNTY AIRPORT UTILITY AGREEMENT]

EXHIBIT "F"  
[MODIFIED UTILITY AGREEMENT FORM – "SITE" UTILITIES]

EXHIBIT "G"  
[WATER AND SEWER EASEMENTS]

EXHIBIT "H"  
[CITY PARK SURVEY/MAP OF PARCEL A]