



## City of Port St. Lucie

### Memorandum

TO: CRA BOARD *mo*  
FROM: GREGORY J. ORAVEC, ASSISTANT CITY MANAGER/CRA DIRECTOR  
DATE: JUNE 10, 2011  
SUBJECT: LEASE OF 1654 SE WALTON ROAD

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As you may be aware, the Agency funded the purchase of 1654 SE Walton Road, also known as the Auto/Pool Building, as part of the City Center Redevelopment Agreement though the owner of record is listed as the City of Port St. Lucie. As you may also be aware, the City/Agency was to trade the subject property for another property within City Center from PSL City Center, LLC, as part of a "like kind exchange" outlined in the City Center Redevelopment Agreement. However, since the owner has failed to perform under the Redevelopment Agreement, the City/Agency remains the owner and must pay the associated special assessment and stormwater fees.

In 2010, the Utility Systems Department inquired as to whether the building on the property could be utilized for the storage of equipment, and I advised them that they could with the understanding that it was on an interim basis and would ultimately be subject to a lease and approval by the Agency Board and, or, City Council. Since the future of the property is still in flux, the Utility Systems Department has successfully been able to use the building without incident and the Utility Systems Department will pay rent, this memorandum serves to recommend approval of the attached lease.

#### Highlights of the lease include:

- The lease is between the City and the Utility Systems Department, but the City will pass the rent onto the Agency.
- The term is for 1 year with 1 year renewals, but can be cancelled upon 30 days written notice.
- The annual rent is \$20,060.13, which is equal to the sum of the annual City Center special assessment and stormwater assessment on the property.
- The Utility Systems Department is responsible for maintenance of the building and grounds.

#### It is also important to note:

- The property has been leased before. It was leased to Felix, the City Center SAD Contractor, during construction of the SAD improvements.
- The Lease will be reviewed by City Council as an attachment to an ordinance since the City Charter requires the conveyance of any interest in City property to be by ordinance.

Lease of 1654 SE Walton

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- The conveyance of any Agency property requires public notice pursuant to Section 163.380, Florida Statutes. As a result, the enclosed public notice has been published in the newspaper.

If you have any questions or I can be of assistance, please do not hesitate to contact me.

Staff recommends approval of this item.

Thank you.

## **LEASE AGREEMENT**

THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2011 by and between the **CITY OF PORT ST. LUCIE, a Florida municipal corporation**, whose post office address is 121 S.W. Port St. Lucie Boulevard, Port St. Lucie, FL 34984 (hereinafter "LANDLORD"), and the **CITY OF PORT ST. LUCIE UTILITY SYSTEMS DEPARTMENT, a department of the City of Port St. Lucie created and established by its City Council pursuant to Section 10.01 of the City Charter**, whose post office address is 900 S.E. Ogden Lane, Port St. Lucie, FL 34983 (hereinafter "TENANT").

### **WITNESSETH**

**WHEREAS**, LANDLORD is the record fee simple owner of the following improved parcel of land containing approximately 1.43 acres, more or less (hereinafter referred to as "LOT 4"), which is legally described as follows:

**Lot 4, City Center 1<sup>st</sup> Replat, according to the map or plat thereof, as recorded in Plat Book 60, pages 16 through 21, of the Public Records of St. Lucie County, Florida.**

**WHEREAS**, the parties understand that LOT 4, which includes any building(s) or structures located thereon, was purchased by, and is an asset of, the City of Port St. Lucie Community Redevelopment Agency, a public body corporate and politic of the State of Florida ("CRA"); and

**WHEREAS**, LANDLORD and the CRA desire to lease to TENANT, and TENANT desires to lease from LANDLORD, said LOT 4 for all legal purposes pursuant to Section 163.380 of the Florida Statutes; and

**WHEREAS**, LANDLORD desires to allocate and assign its receipt of rent payments from TENANT to the CRA.

**NOW THEREFORE**, the parties agree as follows:

## **AGREEMENT**

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the premises above-described as LOT 4 (hereinafter "Leased Premises").

TO HAVE AND TO HOLD unto said TENANT for an initial term of one year, commencing on the 1st day of October, 2011 ("Commencement Date"), and terminating the 30<sup>th</sup> day of September, 2011. The lease shall be for an annual rent of TWENTY THOUSAND SIXTY DOLLARS AND THIRTEEN CENTS (\$20,060.13), payable in equal monthly installments of ONE THOUSAND SIX HUNDRED SEVENTY ONE DOLLARS AND SIXTY EIGHT CENTS (\$1,671.68), payable in advance on the first day of every month to the City of Port St. Lucie Community Redevelopment Agency, 121 S.W. Port St. Lucie Boulevard, Port St. Lucie, FL 34984-5099.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

### **ARTICLE I** **USE OF LEASED PREMISES**

TENANT shall use the Leased Premises pursuant to all applicable laws.

### **ARTICLE II** **CONDITION OF LAND**

TENANT hereby accepts the Leased Premises in an "as is" condition commencing on the Commencement Date. Any and all testing, design, construction and infrastructure improvements, including but not limited to any environmental remediation and drainage improvements required shall require the written consent of the LANDLORD and shall be at the sole cost of the TENANT.

**ARTICLE III  
UTILITIES**

TENANT, during the term of this Lease, shall pay all charges for water, waste water, solid waste, electricity, garbage collection, gas, sewer, cable, telephone service, and any other maintenance, janitorial or custodial services used by TENANT.

**ARTICLE IV  
MAINTENANCE**

TENANT agrees to maintain the grass and keep the grounds in an attractive condition and appearance during the term of this Lease Agreement or any extension or renewal thereof. TENANT agrees to provide, at its sole cost and expense, all maintenance, repairs or replacements, as necessary, both exterior and interior, required to keep the Leased Premises in a state of good repair, and in a safe and clean condition at all times. TENANT shall be responsible for and shall repair any damage caused to the premises as a result of TENANT'S use of the Leased Premises or any vandalism, malicious mischief or criminal acts thereto. LANDLORD shall notify TENANT after discovering any damage which TENANT is responsible for maintaining, repairing or replacing and TENANT shall take the necessary actions to remedy such damage promptly after said notice.

**ARTICLE V  
ASSIGNMENT**

TENANT shall not sublet, transfer, mortgage, pledge, or dispose of this Lease Agreement or any extension term hereof without the written consent of LANDLORD first obtained in each case. Unreasonable consent shall not be withheld.

**ARTICLE VI  
NO LIABILITY FOR PERSONAL PROPERTY**

All personal property placed, moved or constructed on the Leased Premises shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT for any damage to said personal property unless caused by or due to negligence or willful misconduct

of LANDLORD, LANDLORD'S agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

**ARTICLE VII**  
**SIGNS**

Interior and/or exterior signs will be of the design and form of letter to be first approved by LANDLORD, the costs of installation, maintenance and/or painting are to be paid by TENANT. All signs shall be removed by TENANT at termination of this Lease Agreement and any damage or unsightly condition caused to the building or real property because of or due to said signs shall be satisfactorily corrected or repaired by TENANT.

**ARTICLE VIII**  
**ALTERATIONS BY TENANT**

TENANT may not make any alterations, additions or improvements in or to the Leased Premises without the written consent of LANDLORD. All additions, fixtures, or improvements (except but not limited to store and office furniture and fixtures which are readily removable without injury to the Leased Premises) shall be and remain a part of the Leased Premises at the expiration of this Lease Agreement. Subject to the above, removable partitions installed by TENANT within the Leased Premises shall remain TENANT'S property and may be removed by TENANT upon the expiration of the Lease Agreement or any renewal or cancellation hereof.

**ARTICLE IX**  
**PEACEFUL POSSESSION**

Subject to the terms, conditions and covenants of this Lease Agreement, LANDLORD agrees that TENANT shall and may peaceably have, hold, and enjoy the premises above described, without hindrance or molestation by LANDLORD.

**ARTICLE X**  
**DESTRUCTION OF DEMISED PREMISES**

In the event the Leased Premises or any portion thereof should be destroyed or so damaged by fire, windstorm, or other casualty, either party may cancel this Lease Agreement

for its convenience by giving of written notice to the other at any time after the occurrence of the fire, windstorm, or other casualty. In the event of cancellation under this Article, neither party shall be responsible to the other party for any expense associated with the cancellation, and TENANT shall only be liable to LANDLORD for such rents as may be due as of the date of such fire, windstorm, or other casualty.

If neither party shall exercise the foregoing right of cancellation, TENANT shall cause the building and Leased Premises to be repaired and placed in good condition within one hundred twenty (120) days following the date of casualty, time being of the essence. If the Leased Premises sustained damages such that repairs cannot be completed within one hundred twenty (120) days, LANDLORD shall be entitled to cancel the Lease Agreement by the giving of written notice to TENANT at any time, notwithstanding the commencement of any repairs by TENANT. TENANT shall not be liable for rent during such period of time as the Leased Premises be untenable by reason of fire, windstorm or other casualty.

In the event of partial destruction or damages to the Leased Premises which do not render the Leased Premises untenable, the rents shall be proportionately abated in accordance with the extent to which TENANT is deprived of use, occupancy or full enjoyment of the premises, unless TENANT exercises its right of cancellation set forth above.

#### **ARTICLE X** **DISABLED INDIVIDUALS**

TENANT understands, recognizes, and warrants to the best of its knowledge that all common areas are, and shall at all times be maintained, in accordance with the requirements for disabled individuals contained in the Americans with Disabilities Act of 1990 (the "ADA") and Section 553.501 et seq. of the Florida Statutes, as presently written and as may be hereafter amended.

TENANT further warrants that the Leased Premises and access thereto, including but not limited to rest rooms, hallways, entryways to the street, and accessible parking, if parking is provided under the Lease Agreement, shall be in compliance with the accessibility standards for government programs contained in the ADA and all requirements of Section 553.501 et seq. of the Florida Statutes. TENANT covenants and agrees that the Leased Premises and access thereto shall at all times be maintained in accordance with the requirements of Section 255.21 of the Florida Statutes at TENANT'S cost and expense.

TENANT agrees to correct any and all violations of the obligations of TENANT under this Article within ninety (90) days of written notice by LANDLORD of the existence of the same, provided that, if such violations cannot feasibly be corrected within said ninety (90) day period, then TENANT agrees to commence such repairs within said ninety (90) day period and to diligently pursue the completion of same within a reasonable period thereafter.

LANDLORD recognizes and agrees that throughout the term of the Lease Agreement, TENANT may in its discretion change its employees or programs which operate from the Leased Premises. LANDLORD agrees that TENANT may, at TENANT'S expense and subject to LANDLORD'S prior reasonable written approval, make such changes to the Leased premises or the access thereto as may be required by TENANT to accommodate disabled individuals or to provide program accessibility in connection with any such change in TENANT'S programs or work force.

**ARTICLE XI**  
**LANDLORD'S RIGHT OF ENTRY**

LANDLORD or any of its agents shall have the right to enter said Leased Premises during all reasonable working hours, upon the giving of twenty-four (24) hours' prior notice, unless an emergency exists, to examine the same or to make such repairs, additions, or

alterations as may be deemed necessary for the safety, comfort, or preservation thereof of said building.

**ARTICLE XII**  
**LIABILITY FOR DAMAGE OR INJURY**

LANDLORD shall not be liable for any damage or injury which may be sustained by any party or person on the Leased Premises other than the damage or injury caused solely by the negligence of the LANDLORD, its officers, employees, agents, invitees, or instrumentalities, subject to all limitations of Florida Statutes, Section 768.28.

**ARTICLE XIII**  
**SURRENDER OF LEASED PREMISES**

TENANT agrees to surrender to LANDLORD at the end of the term of this Lease Agreement, or any extension thereof, said Leased Premises in as good condition as said Leased Premises were at the beginning of the term of this Lease Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted.

**ARTICLE XIV**  
**SUCCESSORS IN INTEREST**

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

**ARTICLE XV**  
**CANCELLATION**

Either party shall have the right to cancel this Lease Agreement for convenience at any time by giving the other at least thirty (30) days written notice prior to the canceling party's desired termination date for this Lease Agreement.

**ARTICLE XVI**  
**OPTION TO RENEW**

Provided this Lease Agreement is not otherwise in default, TENANT is hereby granted the option to extend this Lease Agreement for additional one year renewal periods upon the same terms and conditions.

**ARTICLE XVII**  
**NOTICES**

All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger or courier service, or by United States Mail with postage prepaid (Airmail if international), and shall be directed as follows:

**TENANT:**

PORT ST. LUCIE UTILITY SYSTEMS DEPARTMENT  
900 S.E. Ogden Lane  
Port St. Lucie, FL 34983  
Attn: Jesus A. Merejo, Utility Systems Director

**LANDLORD:**

CITY OF PORT ST. LUCIE  
121 S.W. Port St. Lucie Boulevard  
Port St. Lucie, FL 34984-5099  
Attn: Jerry A. Bentrrott, City Manager

Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery or (ii) on the date mailed, postage prepaid, and shall constitute sufficient notice to TENANT, and written notice addressed to LANDLORD, and mailed or delivered to the address as stated above, shall constitute sufficient notice to LANDLORD to comply with the terms of this Lease Agreement. Notices provided herein in this paragraph shall include all notices required in this Lease Agreement or required by law.

**ARTICLE XVIII**  
**PERMITS & REGULATIONS**

TENANT covenants and agrees that during the term of this Lease Agreement TENANT will obtain any and all necessary permits and approvals and that all uses of the Leased Premises will be in conformance with all applicable laws, including all applicable zoning regulations.

**ARTICLE XIX**  
**FORCE MAJEURE**

TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants and conditions of the Lease Agreement when prevented from so doing by cause or causes beyond TENANT's or LANDLORD'S control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD.

**ARTICLE XX**  
**DEFAULT OF LANDLORD**

It shall constitute a default of this Lease Agreement by LANDLORD if, except as otherwise provided in this Lease Agreement, LANDLORD fails to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by LANDLORD, where such failure shall continue for a period of thirty (30) days after written notice thereof from TENANT to LANDLORD; provided, however, that if the nature of LANDLORD's non-compliance is such that more than thirty (30) days are reasonably required for its cure, then LANDLORD shall not be deemed to be in default if LANDLORD commenced such cure within said thirty (30) days' period and thereafter diligently prosecutes such cure to completion. In the event of any such default by LANDLORD, TENANT may at any time terminate this Lease within

seven (7) days written notice to LANDLORD or bring an action for damages, or injunctive relief (it being recognized that in such event TENANT is irreparably harmed for which there is no adequate remedy at law). No remedy of TENANT provided for in the Lease Agreement shall be considered to exclude or suspend any other remedy provided for herein, but the same shall be cumulative and in addition to TENANT's remedies at law or in equity.

**ARTICLE XXI**  
**DEFAULT OF TENANT**

If TENANT shall fail to pay any monthly installment or item of rent on the date when the same becomes due or shall violate or fail to perform any of the other conditions, covenants, or agreements herein made by TENANT, and if such violation or failure continues for a period of thirty (30) days after written notice thereof to TENANT by LANDLORD, except for failure to pay rent, which shall have a fifteen (15) days' period for cure after written notice thereof to TENANT by LANDLORD, and further, if TENANT shall be diligently attempting to cure such failure to perform any other conditions, covenants, or agreements, the time to cure such failure shall be extended for so long as TENANT shall diligently prosecute such cure, then LANDLORD may proceed with any remedy available at law or in equity in that State of Florida or by such other proceedings, including re-entry and possession, as may be applicable. All rights and remedies of LANDLORD under this Lease Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to LANDLORD under applicable law.

**ARTICLE XXII**  
**WAIVER**

If, under the provisions hereof, LANDLORD or TENANT shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of LANDLORD'S or TENANT'S rights hereunder, unless expressly stated in such settlement agreement. No waiver by LANDLORD or TENANT of any provision hereof shall be deemed to have been made unless expressed in writing and signed by

both parties. No waiver by LANDLORD or TENANT of any breach of covenant, condition or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by TENANT or receipt by LANDLORD of lesser amount than the monthly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to LANDLORD be deemed an accord and satisfaction and LANDLORD may accept such check or payment without prejudice to or waiver of LANDLORD'S right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement. No re-entry by LANDLORD and no acceptance by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease Agreement.

**ARTICLE XXIII**  
**GOVERNING LAW**

This Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.

**ARTICLE XXIV**  
**WRITTEN AGREEMENT**

This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by ordinance approved by the City Council.

**IN WITNESS WHEREOF**, LANDLORD and TENANT have caused this Lease Agreement to be executed by their respective and duly authorized officers, directors or representatives the day and year first above written.

**[SIGNATURES CONTINUE ON NEXT PAGE]**

ATTEST:

CITY OF PORT ST. LUCIE, a Florida  
municipal corporation

By: \_\_\_\_\_  
Karen A. Phillips  
City Clerk

By: \_\_\_\_\_  
Jerry A. Bentrrott  
City Manager

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

\_\_\_\_\_  
Roger G. Orr  
City Attorney

STATE OF FLORIDA        )  
                                  ) ss  
COUNTY OF ST. LUCIE    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Jerry A. Bentrrott, as City Manager of the City of Port St. Lucie, a Florida municipal corporation, and on behalf of the City of Port St. Lucie.  He is personally known to me or  has produced \_\_\_\_\_ as identification.

NOTARY SEAL/STAMP

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Print Name of Notary Public

**[SIGNATURES CONTINUE ON NEXT PAGE]**

Signed, sealed and delivered  
in the presence of:

**PORT ST. LUCIE UTILITY SYSTEMS  
DEPARTMENT**

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Jesus A. Merejo  
Utility Systems Director

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

STATE OF FLORIDA        )  
                                  ) ss  
COUNTY OF ST. LUCIE    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
by Jesus A. Merejo, as Utility Systems Director, and on behalf of the Port St. Lucie Utility  
Systems Department of the City of Port St. Lucie.  He is personally known to me or  has  
produced \_\_\_\_\_ as identification.

NOTARY SEAL/STAMP

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Print Name of Notary Public

**ORDINANCE 10-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF PORT ST. LUCIE, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE (LESSOR) AND CITY OF PORT ST. LUCIE UTILITY SYSTEMS DEPARTMENT, (LESSEE) FOR 1654 SE WALTON ROAD (A/K/A THE "AUTO/POOL" BUILDING); PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the City of Port St. Lucie (the "City") is the owner of record of the property located at 1654 SE Walton Road (the "Subject Property") and legally described as Parcel 4 of the City Center 1<sup>ST</sup> Replat, as recorded in Plat Book 60, Page 16, of the Public Records of St. Lucie County, Florida, a property located in the City Center Redevelopment Project and a property purchased by, and an asset of, the City of Port St. Lucie Community Redevelopment Agency; and

WHEREAS, until redevelopment occurs, the City Utility Systems Department can utilize the existing building at 1654 SE Walton Road to house its mobile generators; and

WHEREAS, the City desires to allow the Utility Systems Department to utilize the subject property in accordance with the lease agreement attached as Exhibit "A".

NOW, THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City is hereby authorized and directed to enter into a Lease Agreement between the City and the Utility Systems Department for the subject property pursuant to the Lease Agreement in substantially in the form of Exhibit "A".

Section 2. This Ordinance shall become effective ten (10) days after its final adoption.

**ORDINANCE 10-\_\_\_\_\_**

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida,  
this \_\_\_\_\_ day \_\_\_\_\_, 2011.

CITY COUNCIL  
CITY OF PORT ST. LUCIE

BY: \_\_\_\_\_

JoAnn Faiella, Mayor

ATTEST:

\_\_\_\_\_  
Karen A. Phillips, City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
Roger G. Orr, City Attorney

## PUBLIC NOTICE

Notice is hereby given that the City of Port St. Lucie Community Redevelopment Agency (the "Agency") intends to convey the following property to the City of Port St. Lucie Utility Systems Department (the "City") for temporary space and any other use consistent with the Community Redevelopment Plan:

Parcel 4 of the City Center 1<sup>ST</sup> Replat, as recorded in Plat Book 60, Page 16, of the Public Records of St. Lucie County, Florida [More detailed legal description available upon request. Please see location map.]

In accordance with Section 163.380(3)(a) Florida Statutes, this Public Notice serves to notify you that such a disposition of Agency-owned property is intended and that private redevelopers or any persons interested in undertaking the redevelopment or rehabilitation of the Subject Property are invited to submit redevelopment proposals for the property. Such redevelopment proposals must be submitted in writing within 30 days of publication of this Public Notice to Mr. Gregory J. Oravec, Assistant City Manager, City Manager's Office, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida 34984. Details of the intended conveyance and relevant documents may be obtained from the City Manager's Office. For more information, please contact Gregory J. Oravec at (772) 344-4371.

### LOCATION MAP

