

## CONTRACT FOR EXCHANGE OF REAL PROPERTY

**THIS CONTRACT FOR EXCHANGE OF REAL PROPERTY** is made on \_\_\_\_\_, 2019 ("Effective Date"), by and between CREATIVE CONTRACTORS, INC., a Florida corporation, joined by Alan C. Bomstein and Nancy S. Bomstein, individually, (herein "Creative Contractors"), of 620 Drew Street, Clearwater, Florida 33755, and the CITY OF CLEARWATER, FLORIDA, a Municipal corporation of the State of Florida (herein "City"), whose post office address is P.O. Box 4748, Clearwater, Florida 33758-4748, ATTENTION: William B. Horne, II, City Manager, (collectively "Parties") hereby agree that the Parties shall exchange the following real property ("Real Property") (CITY's Property and CREATIVE CONTRACTORS Property, as defined below, is sometimes collectively referred to herein as "Property") upon the following terms and conditions.

### 1. **PROPERTY DESCRIPTION**

**LEGAL DESCRIPTION:** Property to be conveyed by CREATIVE CONTRACTORS to CITY consists of three certain parcels of real property as described on **Exhibit "A"** attached hereto and made part hereof ("CREATIVE CONTRACTORS Property"). Property to be conveyed by CITY to CREATIVE CONTRACTORS consists of two certain parcels of real property as described on **Exhibit "B"** attached hereto and made part hereof ("CITY Property").

2. **FULL PURCHASE PRICE:** This Agreement is for an exchange of Property as between the Parties and there is no additional monetary consideration to be paid by either party at Closing. At the time of Closing, CREATIVE CONTRACTORS shall convey to City, pursuant to the terms herein, CREATIVE CONTRACTORS Property, and CITY shall convey to CREATIVE CONTRACTORS the CITY Property. The conveyance of the CREATIVE CONTRACTORS Property shall constitute full consideration for the conveyance of the CITY Property. The conveyance of the CITY Property shall constitute full consideration for the conveyance of the CREATIVE CONTRACTORS Property.
3. **MANNER OF PAYMENT/CONSIDERATION:** CITY Property shall be conveyed to CREATIVE CONTRACTORS by Special Warranty Deed. CREATIVE CONTRACTORS Property shall be conveyed to City by Warranty Deed and closing costs shall be attributed to the Parties as provided for herein.
4. **PURCHASE PRICE:** The Full Purchase Price is based upon appraisals of both the CREATIVE CONTRACTORS Property and the CITY Property by Tobias Realty Advisors dated February 13, 2019 and February 26, 2019 respectively, both of which are on file with the City Real Estate Department.

## 5. TIME FOR ACCEPTANCE; APPROVALS

Following execution of this contract by CREATIVE CONTRACTORS, the price, terms and conditions as contained herein shall remain unchanged and be held unconditionally open for a period of 45 days following delivery in duplicate original to City Manager of the City of Clearwater for acceptance and approval, counter-offer, or rejection by action of the Clearwater City Council ("Council"). If this agreement is accepted and approved by the Council, it will be executed by duly authorized City officials and delivered to CREATIVE CONTRACTORS within 10 days thereafter. If a counter-offer is approved by the Council, it shall be delivered to CREATIVE CONTRACTORS in writing within 10 days of such action by the City Council, and CREATIVE CONTRACTORS shall have 10 days thereafter to deliver to CITY, written notice of acceptance or rejection of such counter-offer. If written notice of acceptance is not timely delivered, or if the counteroffer is rejected by CREATIVE CONTRACTORS, this contract shall thereafter be null and void in all respects. If this contract is rejected by the Council upon initial presentation to the Council, this contract shall be null and void in all respects and CREATIVE CONTRACTORS shall be so informed in writing within 5 days of such action.

Contingencies: The exchange proposed in this contract shall be contingent upon and/or subject to: (1) the declaration of the City Property as surplus in accordance with the City of Clearwater Code of Ordinances/Charter; (2) City Council approval of a vacating ordinance which vacates a right-of-way easement as recorded in O.R. Book 5870, Page 761, of the Public Records of Pinellas County, Florida. (as more particularly described in **Exhibit "C-1"** attached hereto and incorporated herein); (3) City Council approval of a vacating ordinance which vacates Drainage and Utility easements as recorded in Book 5858, Page 1539, of the Public Records of Pinellas County, Florida (as more particularly described in **Exhibit "C-2"** attached hereto and incorporated herein); (4) City Council approval of a vacating ordinance which vacates a portion of 10' and 15' Drainage and Utility easements as recorded in Book 4082, Page 117, of the Public Records of Pinellas County, Florida (as more particularly described in **Exhibit "C-3"** attached hereto and incorporated herein); (5) City Council approval of a vacating ordinance which vacates a Drainage and Utility easement as recorded in Book 5950, Page 1028, of the Public Records of Pinellas County, Florida (as more particularly described in **Exhibit "C-4"** attached hereto and incorporated herein); (Said vacation ordinance(s) shall be conditioned upon, among other things, the Closing of the property exchange as contemplated herein); (6) the reservation of new easements by City (as more particularly described in **Exhibit "D-1", Exhibit "D-2", Exhibit "D-3", and Exhibit D-4**, attached hereto and incorporated herein); (7) Certain "Wellhead Restrictions" as provided for in **Exhibit "E-1", Exhibit "E-2" and Exhibit "E-3"** (attached hereto and incorporated herein); (8) Utilities on, and available to, the City Property are as identified in **Exhibit "F"**; (9) the City being granted adequate access to the CREATIVE CONTRACTORS Property in accordance with the timeframes contemplated herein for purposes of conducting inspections and investigations, including environmental investigations, as provided for herein. Should CREATIVE CONTRACTORS, fail to provide access to the City, this Contract shall be null



and void in all respects with neither party having any further obligation to the other, except obligations under provisions expressly intended to survive termination.

## **6. TITLE**

CREATIVE CONTRACTORS warrants that at the time of closing, CREATIVE CONTRACTORS shall have legal capacity to and shall convey marketable title to the CREATIVE CONTRACTORS Property by Warranty Deed, subject only to matters contained in Section 7 which are acceptable to CITY. Otherwise title shall be free of liens, easements and encumbrances of record or known to CREATIVE CONTRACTORS, but subject to property taxes for the year of closing; covenants, restrictions and public utilities easements of record; and no others provided there exists at closing no violation of the foregoing and none of them prevents CITY's intended use of the CREATIVE CONTRACTORS Property for downtown redevelopment purposes. CREATIVE CONTRACTORS warrants and represents that there is ingress and egress to the Real Property sufficient for the intended use as described herein.

CITY warrants legal capacity to and shall convey marketable title to the CITY Property by Special Warranty Deed, subject only to matters contained in Section 7, which are acceptable to CREATIVE CONTRACTORS. Otherwise title shall be free of liens, easements and encumbrances of record or known to CITY, but subject to property taxes for the year of closing; covenants, restrictions and public utilities of record; and no others provided there exists at closing no violation of the foregoing and none of them prevents CREATIVE CONTRACTORS's intended use of the CITY Property for redevelopment purposes. CITY warrants and represents that there is ingress and egress to the Real Property sufficient for the intended use as described herein.

## **7. TITLE EVIDENCE**

Each party shall, at the expense of the party granting title and within 15 days prior to closing date, deliver to the other party, a title insurance commitment issued by a Florida licensed title insurer agreeing to liens, encumbrances, exceptions or qualifications set forth in this Contract, and those which shall be discharged by CITY or CREATIVE CONTRACTORS as may be appropriate at or before closing for both the CREATIVE CONTRACTORS Property and the CITY Property, as their interests may appear. The parties shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract. Marketable title shall be determined according to applicable Title Standards adopted by The Florida Bar and in accordance with law. The other party shall have 5 days from receiving evidence of title to examine it. If title is found defective, the objecting party shall, within 3 days thereafter (a total of 8 days), notify the other party in writing specifying defect(s). If the defect(s) render title unmarketable, the granting party will have 120 days from receipt of notice within which to remove the defect(s), failing which the objecting party shall have the option of either accepting the title as it then is or withdrawing from this Contract. CITY or CREATIVE CONTRACTORS, as appropriate will, if title is found unmarketable, make diligent effort to correct defect(s) in title within the time provided therefore.

## **8. SURVEY**

The Parties, at their own expense, within time allowed to deliver evidence of title and to examine same, may have the CITY Property or CREATIVE CONTRACTORS Property surveyed (by CREATIVE CONTRACTORS or CITY, respectively) and certified to the other party and closing agent by a registered Florida land surveyor. If survey shows any encroachment on the respective parcel, or that improvements located on real property encroach on setback lines, easements, lands of others, or violate any restrictions, contract covenants or applicable governmental regulation, the same shall constitute a title defect. The survey shall be performed to minimum technical standards of the Florida Administrative Code and may include a description of the property under the Florida Coordinate System as defined in Chapter 177, Florida Statutes.

## **9. CLOSING PLACE AND DATE**

[ ] CREATIVE CONTRACTORS [X] CITY shall designate closing agent and this transaction shall be closed in the offices of the designated closing agent in Pinellas County, Florida, on or before October 1, 2020. If either party is unable to comply with any provision of this contract within the time allowed, and be prepared to close as set forth above, after making all reasonable and diligent efforts to comply, then upon giving written notice to the other party, time of closing may be extended up to 60 days without effect upon any other term, covenant or condition contained in this contract.

## **10. CLOSING DOCUMENTS**

Closing Agent, on behalf of City, shall furnish closing statements for the respective parties, deed, bill of sale (if applicable), mechanic's lien affidavit, assignments of leases, tenant and mortgage estoppel letters, and corrective instruments for both conveyances. The appropriate parties shall deliver resolutions or applicable documents authorizing the sale and delivery of the deed and certifying the resolution or documents and setting forth facts showing the conveyance conforms to the requirements of local law.

## **11. CLOSING EXPENSES**

Documentary stamps on the CREATIVE CONTRACTORS Property deed, unless this transaction is exempt under Chapter 201.24, Florida Statutes, shall be paid by CREATIVE CONTRACTORS. Documentary stamps on the CITY Property deed, unless this transaction is exempt under Chapter 201.24, Florida Statutes, shall be paid by CREATIVE CONTRACTORS. Each party shall also pay the costs of recording any corrective instruments required to insure marketable title of the property being conveyed by that party. Recordation of the deeds shall be paid by the respective grantee.



## **12. PRORATIONS; CREDITS**

Taxes, assessments, rent (if any) and other revenue of the Properties shall be prorated through the day before closing. Closing agent shall collect all ad valorem taxes uncollected but due through day prior to closing and deliver same to the Pinellas County Tax Collector with notification to thereafter exempt the Property acquired by the City from taxation as provided in Chapter 196, Florida Statutes (2019) subject to a determination by the Pinellas County Tax Collector that the lease back to CREATIVE CONTRACTORS is taxable; (in which case CREATIVE CONTRACTORS will be responsible for taxes under the lease). If the amount of taxes and assessments for the current year cannot be ascertained, rates for the previous year shall be used with due allowance being made for improvements and exemptions. Any deposits held in trust for third parties in occupancy of the Properties shall be credited to the other party at time of closing. Assessments for any improvements that are substantially complete at time of closing shall be paid in full by respective owner/seller.

## **13. OCCUPANCY**

The parties warrant to one another that there are no parties in occupancy on the respective Properties, unless as otherwise disclosed herein. If Property is intended to be rented or occupied beyond closing, the fact and terms thereof shall be stated herein, and the tenant(s) or occupants disclosed pursuant to Paragraph 14. The Parties agree to deliver occupancy of the respective Property at time of closing unless otherwise stated herein. If occupancy is to be delivered before closing, the Party taking occupancy assumes all risk of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing conditions as of the time of taking occupancy unless otherwise stated herein or in separate writing.

## **14. LEASES**

The parties acknowledge that the CREATIVE CONTRACTORS Property is currently subject to a lease agreement between CREATIVE CONTRACTORS and Alan and Nancy Bomstein (collectively, "CREATIVE CONTRACTORS") as Landlord and Creative Contractors, Inc. as Tenant (the "Existing Lease"). CREATIVE CONTRACTORS covenants to the CITY to terminate the Existing Lease at Closing.

Notwithstanding the provisions above, the Parties acknowledge and agree that CREATIVE CONTRACTORS will continue to occupy the CREATIVE CONTRACTORS Property under a Business Lease Contract to be entered into between the CITY and CREATIVE CONTRACTORS simultaneous to closing, and as provided for in paragraph 33 below.

## **15. PROPERTY CONDITION**

The parties shall deliver the respective Properties to the respective grantee party at time of closing in their present "as is" condition, ordinary wear and tear excepted. Neither party makes any warranty other than as is disclosed herein in Paragraph 21 ("WARRANTIES") and marketability of title.

Each Party's covenant to exchange the respective Properties "as is" is more specifically represented in either subparagraph 1. a. or b. as marked [X].

a. [ ] As Is: Buyer has inspected the Property or waives any right to inspect and accepts the Property in its present "as is" condition.

b. [X] As Is With Right of Inspection: Each Grantee may, at its expense and within 90 days following the Effective Date ("Inspection Period"), conduct inspections, tests, environmental and any other investigations of the Property it is acquiring as it deems necessary to determine suitability for its intended use. The other Party shall grant reasonable access to the Property to said Grantee, its agents, contractors and assigns for the purposes of conducting the inspections provided, however, that all such persons enter the Property and conduct the inspections and investigations at their own risk. Each Party will, upon reasonable notice, provide utilities services as may be available for Grantee's inspections and investigations. Each Party shall not engage in any activity that could result in a mechanics lien being filed against the Property without respective Grantor's prior written consent. Grantee may terminate this contract by written notice to the respective Grantor prior to expiration of the Inspection Period if the inspections and/or investigations reveal conditions which are reasonably unsatisfactory to Grantee, unless the respective Grantor elects, in its sole discretion, to repair or otherwise remedy such conditions to Grantee satisfaction. If this transaction does not close, Grantee agrees, at Grantee expense, to repair all damages to the Property resulting from the inspections and investigations and return the Property to its present condition.

## **16. WALK-THROUGH INSPECTION**

At a time mutually agreeable between the parties, but not later than the day prior to closing, the parties may conduct a final "walk-through" inspection of the Properties to determine compliance with any obligations under Paragraphs 8, 13 and 15. No new issues may be raised as a result of the walk-through.

## **17. HOLD HARMLESS**

CITY is self-insured, and subject to the limits and restrictions of the Florida sovereign immunity statute, F.S. 768.28, agrees to indemnify and hold harmless CREATIVE CONTRACTORS from claims of injury to persons or property during the inspections and investigations described in Paragraph 15(b) resulting from CITY's own negligence only, or that of its employees or agents only, subject to the limits and restrictions of the sovereign immunity statute.

CREATIVE CONTRACTORS agrees to indemnify and hold harmless the City from claims of injury to persons or property during the inspections and investigations described in Paragraph 15(b) resulting from CREATIVE CONTRACTORS own negligence, or that of its employees or agents only.

## **18. RISK OF LOSS**

If any of the property is damaged by fire or other casualty before closing and the cost of restoration does not exceed 3% of the assessed valuation of the property so damaged, the cost of restoration shall be an obligation of the grantor party and closing shall proceed pursuant to the terms of this contract with restoration costs escrowed at closing. If the cost of restoration exceeds 3% of the assessed valuation of the improvements so damaged, the respective Grantee shall have the option of either taking the Property "as is", together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or of canceling this contract. Cancellation by one Grantee shall constitute a bilateral cancellation.

## **19. PROCEEDS OF SALE; CLOSING PROCEDURE**

The deeds to the CITY Property and CREATIVE CONTRACTORS Property shall be recorded upon delivery of all deeds and other required closing documents, and payment and clearance of funds payable for title insurance and other closing costs. Proceeds of sale shall be held in escrow by CITY'S attorney or by such other mutually acceptable escrow agent for a period of no longer than 5 days from and after closing, during which time evidence of title shall be continued at the respective owner's expense to show title in the other party, without any encumbrances or change which would render the property's title unmarketable from the date of the last title evidence. If title is rendered unmarketable through no fault of the other party, the objecting party shall, within the 5 day period, notify the other party in writing of the defect and the non-objecting party shall have 30 days from the date of receipt of such notification to cure the defect. If the defect is not timely cured, all funds paid by or on behalf of the other party shall, upon written demand made and within 5 days after demand, be returned to the other party and simultaneously with such repayment, the property shall be reconveyed by the same type deed of the original conveyance. If the objecting party fails to make timely demand for refund and reconveyance of property, objecting party shall take title "as is", waiving all rights against the non-objecting party as to any intervening defect except as may be available to objecting party by virtue of warranties contained in the deed. The escrow and closing procedure required by this provision may be waived if title agent insures adverse matters pursuant to Section 627.7841, F.S. (2016), as amended.

## **20. DEFAULT**

If this transaction is not closed due to any default or failure on the part of either Grantor, other than to make the title marketable after diligent effort, the respective Grantee may seek specific performance or unilaterally cancel this agreement upon giving written notice



to Grantor. If a Broker is owed a brokerage fee regarding this transaction, the defaulting party shall be liable for such fee.

## **21. RESPECTIVE GRANTOR WARRANTIES**

Respective Grantors warrant that there are no known facts that would materially affect the value of the Properties, or which would be detrimental to the Properties, or which would affect parties desire to exchange the properties except as follows:

**CITY Property:** Creative Contractors acknowledges and hereby agrees to accept the CITY Property subject to the following, which may materially affect the value of the City Property: 1) the reservation of certain easements burdening the CITY Property as more particularly described in **Exhibits "D-1"**, D-2, D-3, D-4, ; 2) Wellhead Restrictions applicable to the CITY Property as reflected in **Exhibits "E-1"**, **"E-2"**, and **"E-3"**; the state of the utilities present on, or absent from, the CITY Property, as the case may be, as reflected in **Exhibit "F"**.

The parties shall have the number of days granted in Paragraph 15(b) above ("Inspection Period") to investigate said matters as disclosed by the other party, and shall notify the granting party in writing regarding closing on this contract notwithstanding said matters, or whether the contract shall be cancelled. Failure to notify the other party within said time period, the respective Grantee shall be deemed to have waived any objection to the disclosed matters and shall have the obligation to close on the contract.

## **22. RADON GAS NOTIFICATION**

In accordance with provisions of Section 404.056(5), Florida Statutes (2016), as amended, the parties are hereby informed as follows:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

## **23. CONTRACT NOT RECORDABLE; PERSONS BOUND**

Neither this contract nor any notice of it shall be recorded in any public records. This contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all.

## **24. NOTICE**

All notices provided for herein shall be deemed to have been duly given if and when deposited in the United States Mail, properly stamped and addressed to the respective party to be notified, including the parties to this contract, the parties attorneys, escrow agent, inspectors, contractors and all others who will in any way act at the behest of the parties to satisfy all terms and conditions of this contract.

## **25. ASSIGNABILITY; PERSONS BOUND**

This contract [X] is not assignable [ ] is assignable; however, this contract is assignable by CREATIVE CONTRACTORS to an entity controlled by Alan Bomstein. The terms "CITY", "CREATIVE CONTRACTORS", and "Broker" (if any) may be singular or plural. This Contract is binding upon CITY, CREATIVE CONTRACTORS, and their heirs, personal representatives, successors and assigns (if assignment is permitted).

## **26. ATTORNEY FEES; CREATIVE CONTRACTORS**

In any litigation arising out of this contract, each party shall be responsible for its own attorney's fees and costs.

## **27. TYPEWRITTEN OR HANDWRITTEN PROVISIONS**

Typewritten or handwritten provisions shall control all printed provisions of contract in conflict with them.

## **28. BROKER REPRESENTATION**

Neither party is represented by a real estate broker.

## **29. EFFECT OF PARTIAL INVALIDITY**

The invalidity of any provision of this contract will not and shall not be deemed to effect the validity of any other provision. In the event that any provision of this contract is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

## **30. GOVERNING LAW**

It is agreed by and between the parties hereto that this contract shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. In any litigation arising out of or relating to this Contract, the Parties agree that venue shall be in the United States District Court, Middle District of Florida, Tampa Division, or the Circuit Court located in Pinellas County, Florida.

## **31. COUNTERPARTS; FACSIMILE COPY**

This contract may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A facsimile copy of this contract, including any addendum, attachments and any written modifications hereof, and any initials or signature thereon shall be deemed an original.

### **32. EXHIBITS ATTACHED**

Exhibit "A" - Legal description of CREATIVE CONTRACTORS Property  
Exhibit "B" - Legal description of CITY Property  
Exhibit "C-1" - Easement at O.R. Book 5870, Pg. 761 to be vacated  
Exhibit "C-2" - Easement at O.R. Book 5858, Pg. 1539 to be vacated  
Exhibit "C-3" - Easement at O.R. Book 4802, Pg. 117 to be partially vacated  
Exhibit "C-4" - Easement at O.R. Book 5950, Pg. 1028, to be vacated  
Exhibit "D-1" - (new) Drainage and Utility Easement to be reserved  
Exhibit "D-2" - (new) Ingress/Egress, Drainage and Utility Easement to be reserved  
Exhibit "D-3" - (new) Utility Easement to be reserved  
Exhibit "D-4" - (new) Drainage and Utility Easement to be reserved  
Exhibit "E-1" - Wellhead restrictions  
Exhibit "E-2" - Wellhead restrictions  
Exhibit "E-3" - Wellhead restrictions  
Exhibit "F" - City Property - Availability of Utilities  
Exhibit "G" - Lease form for CREATIVE CONTRACTORS leaseback of CREATIVE CONTRACTORS Property

### **33. BUSINESS LEASE CONTRACT ADDENDUM**

It is agreed by and between the Parties that the leaseback of the CREATIVE CONTRACTORS Property by CREATIVE CONTRACTORS in accordance with the terms and provisions of that certain Business Lease Contract ("Lease") (attached hereto and incorporated herein as **EXHIBIT "G"**) in its substantial form, is integral and appurtenant to this Contract and will be executed and effective simultaneous to closing, allowing CREATIVE CONTRACTORS to remain in occupancy of the CREATIVE CONTRACTORS Property post-closing.

### **34. ENTIRE AGREEMENT**

Upon execution by CREATIVE CONTRACTORS and CITY, this contract shall constitute the entire agreement between the parties, shall supersede any and all prior and contemporaneous written and oral promises, representations or conditions in respect thereto. All prior negotiations, agreements, memoranda and writings shall be merged herein. Any changes to be made in this agreement shall only be valid when expressed in writing, acknowledged by the parties and incorporated herein or attached hereto.



### 35. COOPERATION OF CITY

The CITY acknowledges that CREATIVE CONTRACTORS desires to file applications for development during the pendency of this Contract for Exchange of Real Property. The CITY agrees to cooperate with CREATIVE by executing an Affidavit to Authorize Agent as required by the City of Clearwater Planning & Development Services Department, in order to allow CREATIVE to pursue such applications prior to Closing. CREATIVE shall pay any and all costs in connection therewith, and hereby assumes all risks related thereto, including the outcome of any such applications. CITY makes no guarantee or warranty as to the outcome of the regulatory processes associated with the applications.

City Signature Page to Contract for Exchange of Real Property – CREATIVE CONTRACTORS AND CITY OF CLEARWATER

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_  
George N. Cretekos  
Mayor

By: \_\_\_\_\_  
William B. Horne II  
City Manager

Approved as to form:

Attest:

  
\_\_\_\_\_  
Laura Lipowski Mahony  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

Creative Contractors, Inc. Signature Page to Contract for Exchange of Real Property –  
CREATIVE CONTRACTORS AND CITY OF CLEARWATER

Witness:

Randi Kraus

Randi Kraus  
Print Name

CREATIVE CONTRACTORS, INC.,  
a Florida corporation

By: 

Print Name: ALAN C. BOMSTEIN

Title: CEO

Witness:

Ashley Warden


Ashley Warden  
Print Name

Witness:

Randi Kraus

Randi Kraus  
Print Name

Alan C. Bomstein, individually



Witness:

Ashley Warden

Ashley Warden  
Print Name

Witness:

Randi Kraus

Randi Kraus  
Print Name

Nancy S. Bomstein, individually



Witness:

Ashley Warden

Ashley Warden  
Print Name



EXHIBIT "A"

CREATIVE CONTRACTORS, INC. PROPERTY

Real Property ID Nos.: 09-29-15-44352-006-0030

09-29-15-44352-006-0050

09-29-15-44352-006-0070

As more particularly legally described as:

The real property, buildings and improvements located on the East ½ of Lot 2; all of Lot 3; Lot 6 less North 62.5 feet thereof, and that part of Lots 4 and 5 lying West of ACL Railroad right-of-way, Block 6, JONES SUBDIVISION OF NICHOLSON'S ADDITION TO CLEARWATER HARBOR, according to the map or plat thereof as recorded in Plat Book 1, Page 13, of the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part, together with that certain vacated alley lying between said Lots 3, 4, 5, and 6; as more fully described in O.R. Book 1522, Page 34, Public Records of Pinellas County, Florida.

AND

Easterly 60 feet of Lot 7, and North ½ of Lot 6, Block 6, JONES SUBDIVISION OF NICHOLSON'S ADDITION TO CLEARWATER HARBOR, according to the map or plat thereof, as recorded in Plat Book 1, Page 13, Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part.

EXHIBIT "B"

CITY PROPERTY

Real Property ID No's: 17-29-16-00000-130-0900 AND 17-29-16-34650-000-0340

As more particularly legally described as:

Beginning at a point 530 feet East of the Southwest corner of the SW 1/4 of the NE 1/4 of Section 17, Township 29 South, Range 16 East, run thence East 200 feet, thence North 1320 feet to the North boundary line of said SW 1/4 of NE 1/4 thence West 200 feet to a point 530 feet East of the NW corner of said SW 1/4 of NE 1/4 of said Section, thence South 1320 feet to P.O.B., all in SW 1/4 of NE 1/4 of Section 17, Township 29 South, Range 16 East. The above dimensions approximate more or less. LESS AND EXCEPT that portion reserved for right of way of State Road #60 known as Gulf to Bay Boulevard.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

A portion of land, lying in the SW 1/4 of the NE 1/4 of Section 17, Township 29 South, Range 16 East, Pinellas County, Florida, and being more particularly described as follows:

Commencing at the Southwest corner of the SW 1/4 of the NE 1/4 of said Section 17; thence run N.  $89^{\circ}46'01''$  E., along the South line of the SW 1/4 of the NE 1/4 a distance of 530.00 feet to a point; thence run N.  $00^{\circ}20'15''$  W., a distance of 60.00 feet to a point where the Northerly right-of-way line of Gulf-to-Bay Boulevard intersects with the East line of GULF TO BAY GARDENS, as recorded in Plat Book 50, Page 60, public records of Pinellas County, Florida said point being the Point of Beginning; thence run N.  $00^{\circ}20'19''$  W., along said East line of GULF TO BAY GARDENS, a distance of 225.00 feet to a point; thence run in an Easterly direction a distance of 200.00 feet to a point; thence S.  $00^{\circ}20'15''$  E., a distance of 225.00 feet to a point on the Northern right-of-way of Gulf-to-Bay Boulevard; thence S.  $89^{\circ}45'01''$  W., along said right-of-way a distance of 200.00 feet to the Point of Beginning.

AND

The North 300 feet of the East 100 feet or the West 830 feet of the SW 1/4 of the NE 1/4 of Section 17, Township 29 South, Range 16 East, TOGETHER WITH AND INCLUDING an easement for ingress and egress to and from the above granted property over and upon the rear property in Pinellas County, Florida, owned by grantor herein and described as: The East 15 feet of the East 100 feet of the West 830 feet of the SW 1/4 of the NE 1/4 of Section 17, Township 29 South, Range 16 East, less and excepting the South 330 feet thereof and less and excepting the North 300 feet thereof.

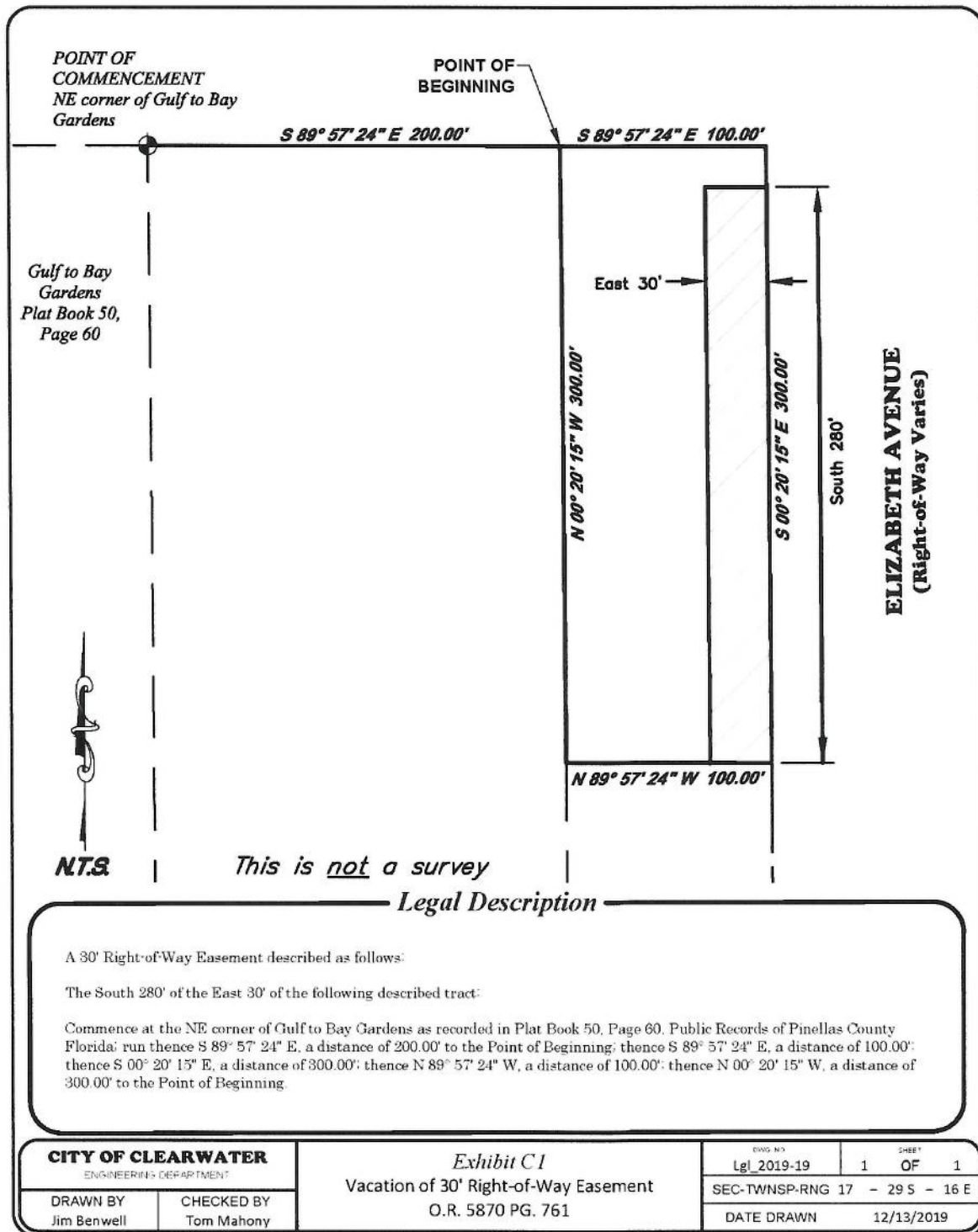
AND

North 60 feet of Lot 34, GULF TO BAY GARDENS, according to the map or plat thereof as recorded in Plat Book 50, Page 60, public records of Pinellas County, Florida.

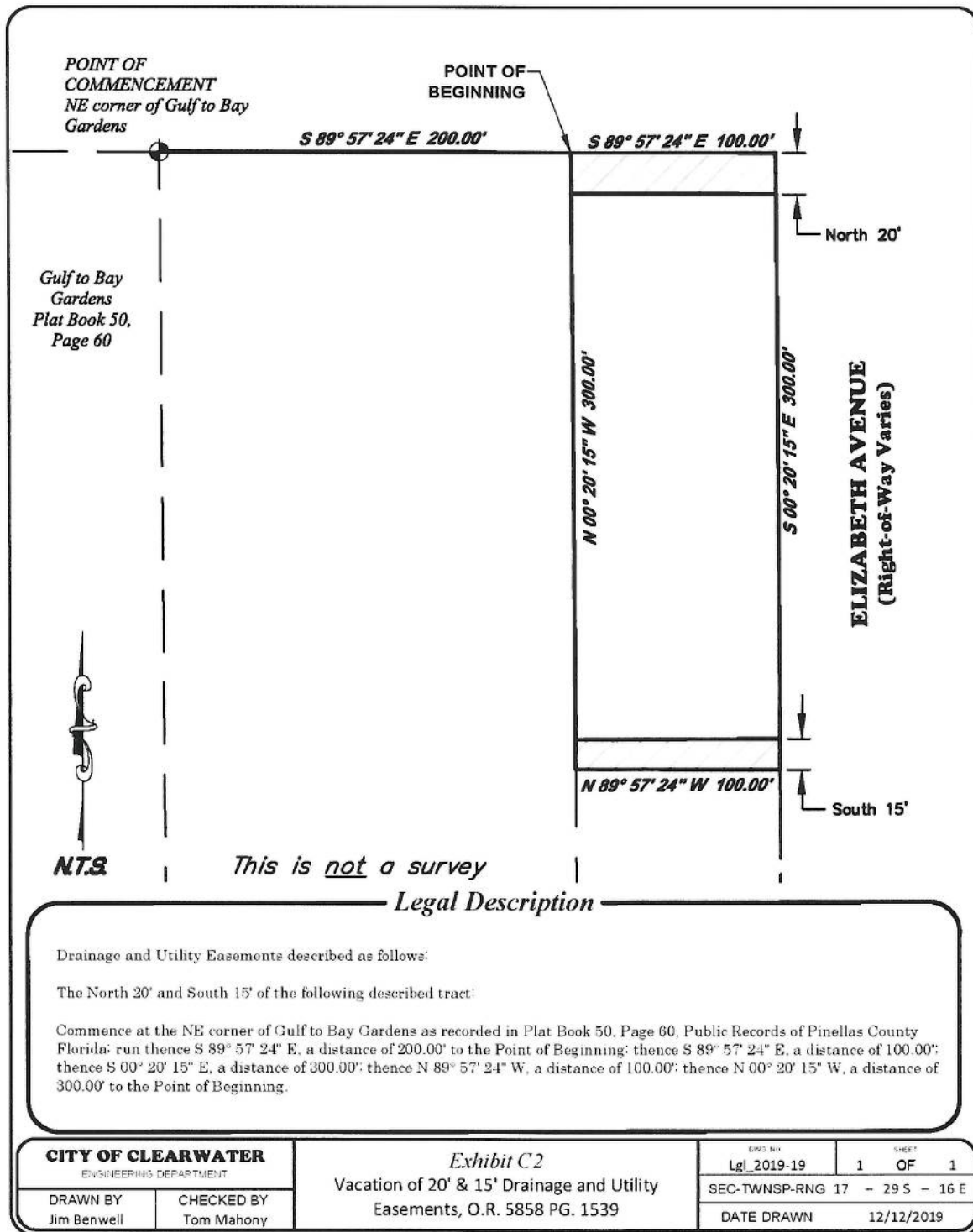




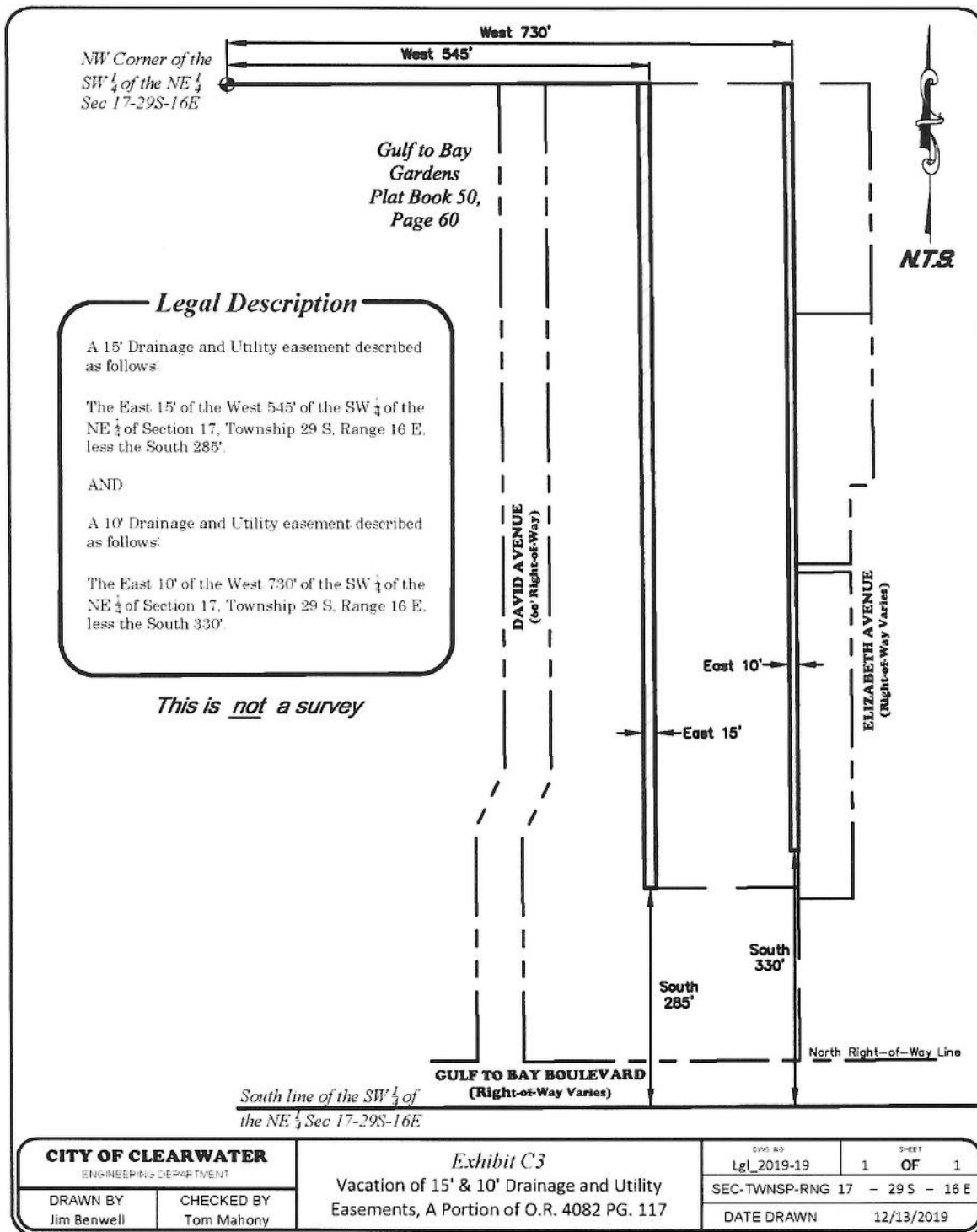
EXHIBIT "C-1"



# EXHIBIT "C-2"

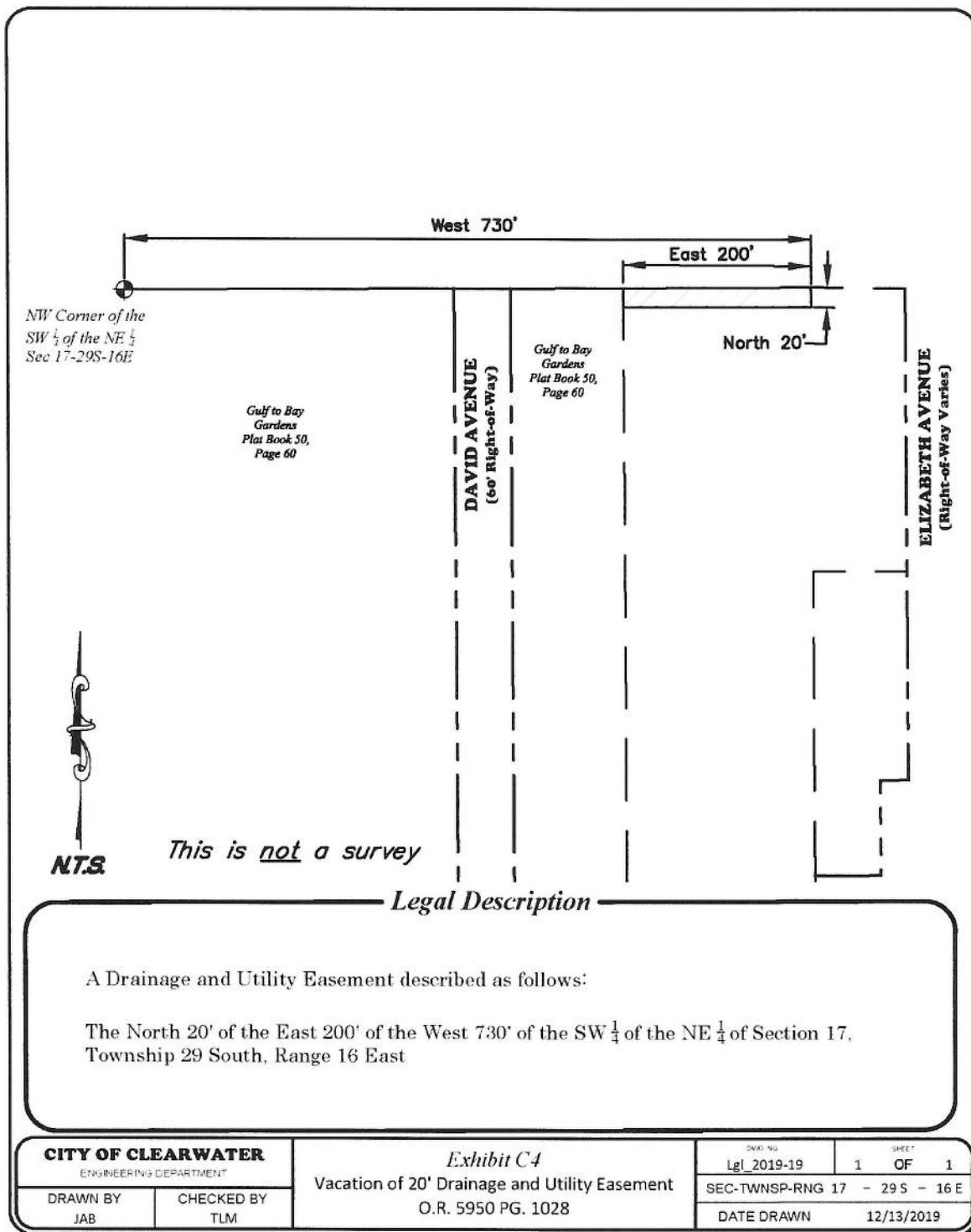


# EXHIBIT "C-3"





# EXHIBIT "C-4"



# EXHIBIT "D-1"

*Note:*  
Bearing basis obtained from David Avenue Property  
Boundary Survey by Land Precision Corporation, Job  
#19237 on 10/14/2019.

**Gulf to Bay Gardens**  
Plat Book 50, Page 60

## Legal Description

A 30' Drainage and Utility easement described  
as follows:

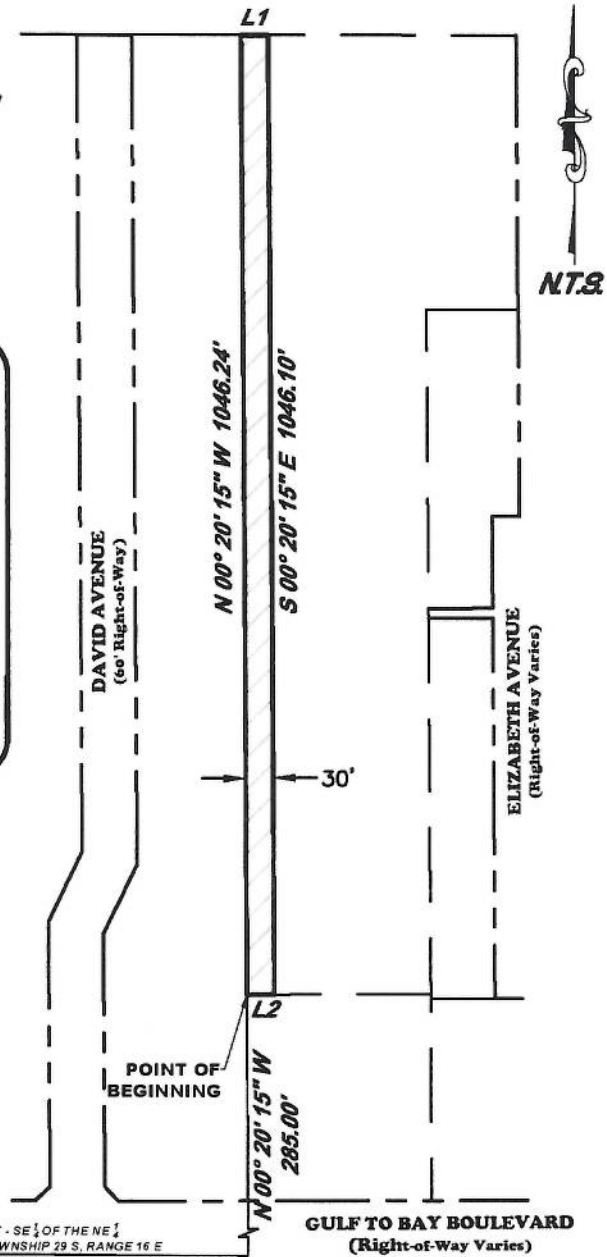
Commence at the SW corner of the SW  $\frac{1}{4}$  of the  
NE  $\frac{1}{4}$  of Section 17, Township 29 S, Range 16 E;  
thence N 89° 46' 01" E, along the South line of  
the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 17, Township 29  
S, Range 16 E, a distance of 530.00'; thence  
N 00° 20' 15" W, a distance of 285.00' to a  
Point of Beginning; thence N 00° 20' 15" W, a  
distance of 1046.24'; thence S 89° 57' 24" E, a  
distance of 30.00'; thence S 00° 20' 15" E, a  
distance of 1046.10'; thence S 89° 46' 01" W, a  
distance of 30.00' to the Point of Beginning.

Line Table		
Line #	Bearing	Distance
L1	S 89° 57' 24" E	30.00'
L2	S 89° 46' 01" W	30.00'

POINT OF COMMENCEMENT

SW Corner of the SW  $\frac{1}{4}$  of  
the NE  $\frac{1}{4}$  Sec 17-29S-16E

SOUTH LINE - SE  $\frac{1}{4}$  OF THE NE  $\frac{1}{4}$   
OF SECTION 17, TOWNSHIP 29 S, RANGE 16 E  
N 89° 46' 01" W 530.00'

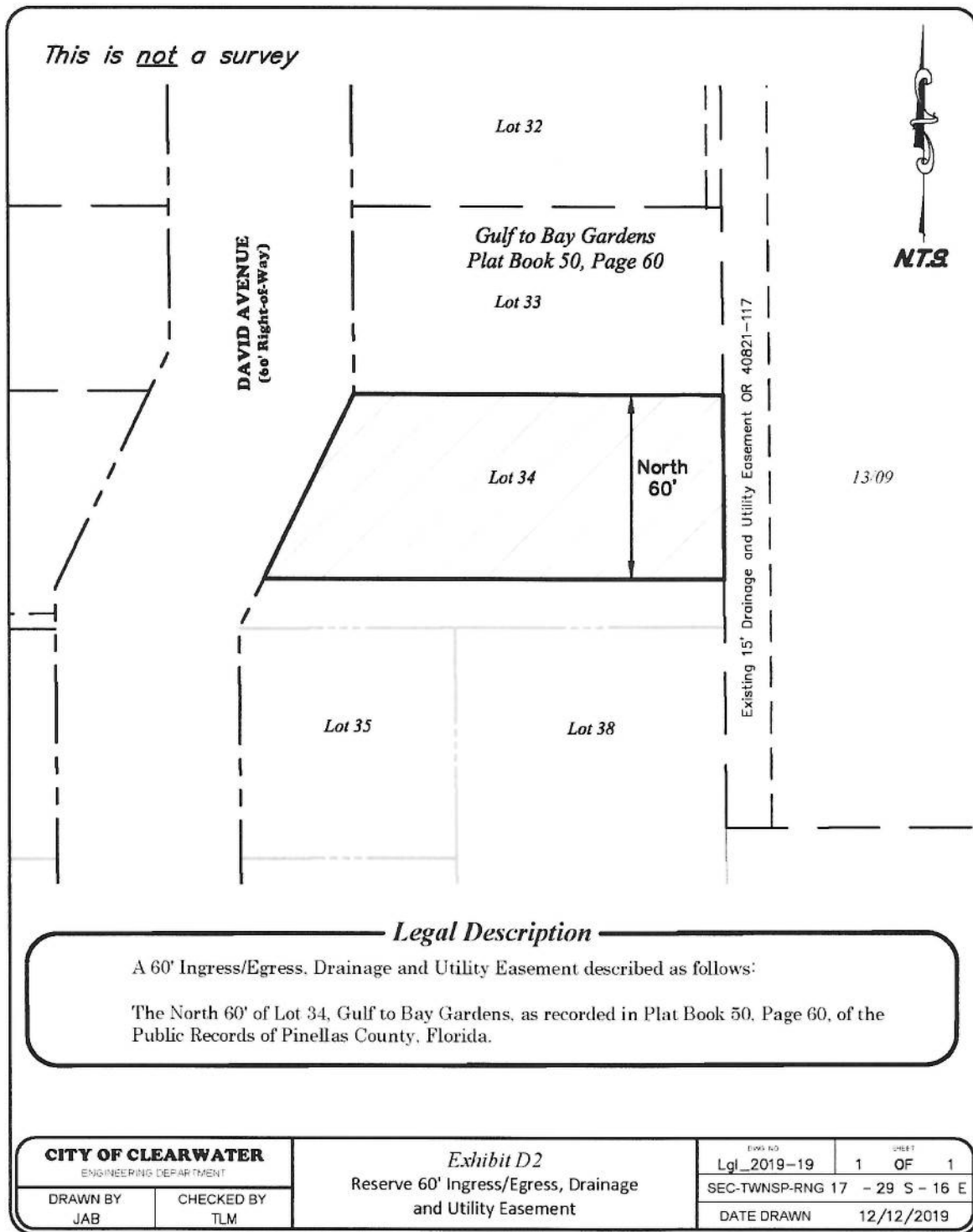


GULF TO BAY BOULEVARD  
(Right-of-Way Varies)

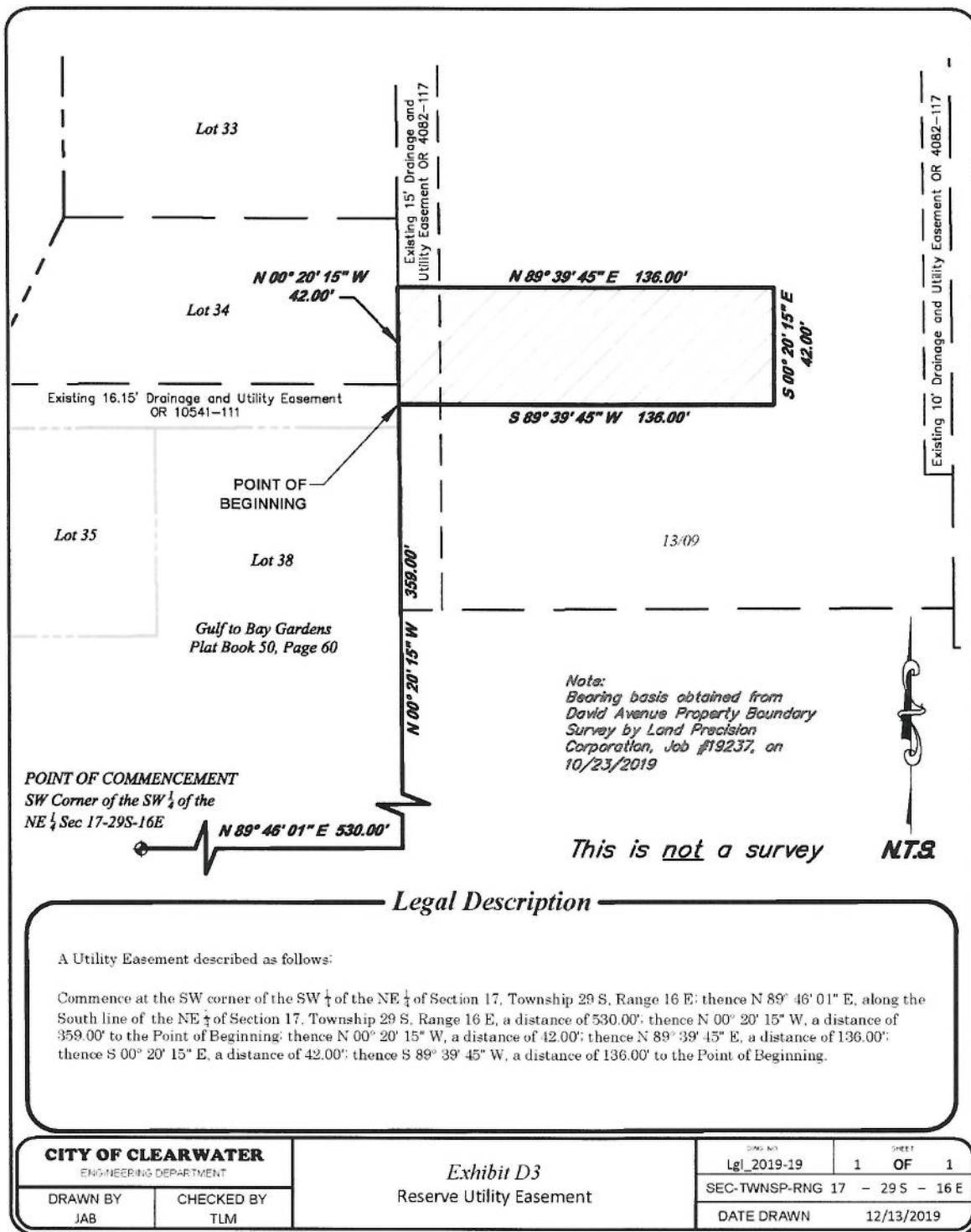
*This is not a survey*

<b>CITY OF CLEARWATER</b> ENGINEERING DEPARTMENT		<i>Exhibit D1</i>  Reserve 30' Drainage and Utility Easement	CITY NO.	SHEET		
DRAWN BY Lee Cheek	CHECKED BY Tom Mahony		Lgl_2019-19	1	OF	1
			SEC-TWN-SP-RNG 17	-	29 S	-
			DATE DRAWN	12/13/2019		

# EXHIBIT "D-2"

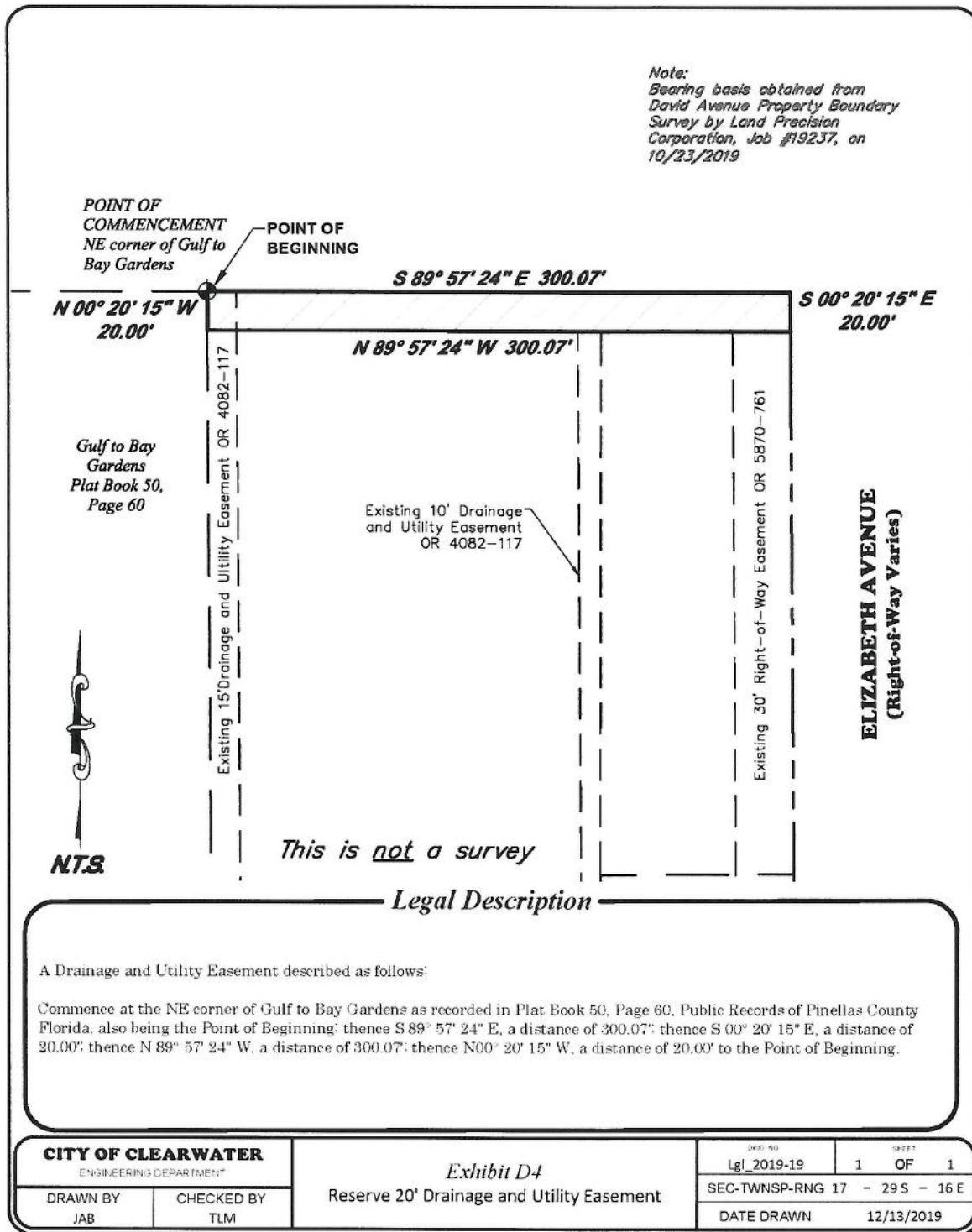


# EXHIBIT "D-3"





# EXHIBIT "D-4"



## EXHIBIT "E-1"

### WELLHEAD RESTRICTIONS

- A Wellhead Protection Permit application (EXHIBIT "G-2") must be submitted to the Engineering Department of the City of Clearwater with all the attachments requested for approval before construction can occur around the wellsite.
- Sanitary sewer cannot be placed within 100' radius of the well.
- Reclaimed water cannot be used within 75' radius of the well.
- Contractors cannot build within 100' of existing wells mainly meaning structures or items that are deemed high risk to ground water quality and public health.
- All rules, regulations, law or policy by any applicable governmental agency that may apply to activities or impacts on Wellheads, as may be amended from time to time.

EXHIBIT "E-2"



Permit	No:
_____	
Well No.:	_____
Expiration Date:	_____
(For Dept. Use Only)	

**APPLICATION FOR WELLHEAD PROTECTION PERMIT**

City of Clearwater - Engineering Department

Owner's Name : \_\_\_\_\_ Applicant's Name : \_\_\_\_\_

Owner's Address : \_\_\_\_\_ Applicant's Address : \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Owner's Phone No: \_\_\_\_\_ Applicant's Phone No: \_\_\_\_\_

Project Name : \_\_\_\_\_

Project Address : \_\_\_\_\_

ID No. (s) of Adjacent Potable Water Well (s) \_\_\_\_\_

For all applications provide the following attachments:

1. Location map showing the potable water well, 500 feet surrounding the well and the property boundaries for this application.
2. The location and identification of all uses within 500 feet for a commercial use or within 100 feet for a residential use.
3. A list of all contaminating materials to be used or stored on the subject property.

If contaminating materials are proposed to be used or stored on the subject property, a Protection-Containment Plan shall be submitted that includes the following:

- (1) A list of all regulated substances, including quantities, which are to be stored, handled, used or produced in the activity being permitted.
- (2) A detailed description of the activities that involve the storage, handling, use or production of the regulated substances indicating the unit quantities in which the substances are contained or manipulated.
- (3) A description of the containment, the emergency collection services and containers and the emergency plan that will be employed.
- (4) A description of the daily monitoring activities that have been or will be instituted.
- (5) A description of the maintenance that will be provided for the containment facility, monitoring system and emergency equipment.
- (6) A description of the groundwater monitoring wells that have been or will be installed, other pertinent well construction information and the arrangements which have been or will be made for certified analyses for specified regulated substances (if required).
- (7) The extent of employee safety training and practices.

I hereby certify that the information contained herein is true and accurate and that I am the legal owner of the subject property or have legal authority to execute this application on behalf of the property owner. I agree to indemnify and hold the City of Clearwater harmless from any and all claims, liabilities, causes of action, or damages arising out of the issuance of this permit. I am aware that any deviation from the information submitted with this application or the conditions attached to the permit shall be considered a violation of Chapter 24, Article III, Clearwater Code of Ordinance.

OWNER'S SIGNATURE: \_\_\_\_\_ APPLICANT'S SIGNATURE  
:\_\_\_\_\_



## EXHIBIT "E-3"

### City of Clearwater Code of Ordinances Wellhead Protection

#### Chapter 24 – Public Health

#### Article III – Wellhead Protection

##### Sec. 24.61. - Purpose and intent of article.

The purpose and intent of this article is to protect and safeguard the public health, safety, and welfare by providing a wellhead protection program which regulates the use or storage of contaminating materials within a prescribed protection zone surrounding potable water supply wells within the City of Clearwater.

(Ord. No. 7800-07, § 1, 9-6-07)

##### Sec. 24.62. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

*Contaminating material* means any physical, chemical, biological, or radiological formulation, mixture or substance, wet or dry, natural or synthetic, that could be introduced into the public potable water supply in quantities and concentrations that could violate the standards assigned to potable water as established in Chapter 62-550, Florida Administrative Code (F.A.C.), of the Florida Department of Environmental Protection (FDEP).

*Engineering director* means the director of the engineering department of the city, or an employee within the engineering department authorized by the director to exercise authority or to carry out any of the duties under this article.

*Potable water well* means any water well that supplies water for human consumption and that is connected to the City of Clearwater Public Water System.

(Ord. No. 7800-07, § 1, 9-6-07)

##### Sec. 24.63. - Permit—Required.

- (1) A wellhead protection permit shall be obtained from the engineering director for any new business, commercial, industrial or other activity that has the potential to store or discharge harmful quantities of known contaminating materials if any portion of the subject property is within 1,000 feet of a potable water well. A wellhead protection permit shall be obtained from the engineering director for any new residential construction on property located within the city if any portion of the subject property is within 100 feet of a potable water well. A wellhead protection permit may be issued by the engineering director after review of the application and protection-containment plan (if required) submitted by the applicant. No business tax receipt or building permit shall be issued for any activity for which a wellhead protection permit is required until such permit has been issued. Permits shall have a term not to exceed

12 months and shall expire on March 15 of each year. Applications for annual permit renewal shall be submitted no later than 30 days prior to permit expiration.

(Ord. No. 7800-07, § 1, 9-6-07; Ord. No. 8070-09, § 15, 12-3-09)

Sec. 24.64. - Permit requirements.

- (1) Activities within a 500-foot radial distance around a potable water supply well shall conform to the requirements of Chapter 62-521, F.A.C., Wellhead Protection.
- (2) Activities defined as potentially high risk to ground water quality in Chapter 62-555.312, F.A.C. shall not be permitted within 100 feet of an existing potable water supply well.
- (3) Activities defined as a moderate risk to ground water quality in Chapter 62-555.312, F.A.C. shall not be permitted within 50 feet of an existing potable water supply well.
- (4) If any new activity is proposed within 1,000 feet of a potable water supply well that has the potential to store harmful quantities of known contaminating materials, a protection-contamination plan shall be submitted. If any contaminating material is proposed to be used or stored for residential use within 100 feet of a potable water supply well, a protection-containment plan shall be submitted.
- (5) A wellhead protection permit application shall at a minimum include a location map of the potable water well and 1,000 feet surrounding the well, plans for the proposed development or expansion/change of an existing use (if applicable), the location and identification of the proposed activity, a listing of any contaminating material to be used or stored on the site and a protection-containment plan if necessary.

(Ord. No. 7800-07, § 1, 9-6-07; Ord. No. 8070-09, § 16, 12-3-09)

Sec. 24.65. - Review of protection-containment plan.

- (1) In reviewing a protection-containment plan submitted by an applicant for a wellhead protection permit, the following factors shall be considered when determining the sufficiency of the plan:
  - (a) The amount, character and intended use of the contaminating material involved;
  - (b) Storage, conveyance and handling techniques to be employed by the applicant;
  - (c) The extent of any propensity to spill, break, lose or discharge contaminating material;
  - (d) The type of containment devices to be employed;
  - (e) The extent of employee safety training and practices; and
  - (f) Any other consideration appropriate to the protection of the wellhead.
- (2) No wellhead protection permit shall be issued unless the protection-containment plan and permit application fully addresses all contamination and safety matters to the satisfaction of the engineering director. A wellhead protection permit may be issued subject to conditions related to the protection of the public potable water supply.

(Ord. No. 7800-07, § 1, 9-6-07)

Sec. 24.66. - Permit denial.

If a wellhead protection permit application is denied, a notice of denial, including the reasons for such denial, shall be provided to the applicant. The applicant may appeal a permit denial or may appeal a condition imposed in conjunction with a permit approval, within 30 days following receipt of notice of denial or approval by filing a request for review with the city manager. The request for review shall

include, among other things, a statement of the grounds upon which the applicant seeks review. The city manager shall conduct a hearing within 45 days of receipt of a request for review. The city manager's decision regarding the application shall be deemed the final administrative action of the city, and such review shall be deemed a necessary administrative remedy prior to seeking judicial relief.

(Ord. No. 7800-07, § 1, 9-6-07)

Sec. 24.67. - Sale of property, change of use.

- (1) A wellhead protection permit shall be nontransferable and nonassignable. A new wellhead protection permit shall be required whenever the property or business is conveyed. A new protection-containment plan (if previously required or if required for new proposed activities) shall be submitted with the new wellhead protection permit.
- (2) A new wellhead protection permit shall be required whenever there is a change of use on the property as defined in section 8-102 of the City of Clearwater Community Development Code. A new protection-containment plan shall be submitted if required for the use, handling, conveyance or storage of contaminating material on the property.

(Ord. No. 7800-07, § 1, 9-6-07)

Sec. 24.68. - Enforcement of article—Inspections.

The engineering director shall designate employees within the engineering department as inspectors for the purpose of enforcing this article. Such inspectors may inspect the premises of a wellhead protection permit holder during normal working hours of the permit holder for the purpose of determining compliance with this article and with any condition imposed in conjunction with the issuance of a permit.

(Ord. No. 7800-07, § 1, 9-6-07)

Sec. 24.69. - Revocation of permit.

A failure to comply with any of the requirements of this article or a failure to comply with any condition imposed upon the issuance of a wellhead protection permit shall constitute grounds for the revocation of a wellhead protection permit. The engineering director may revoke a permit by providing notice of revocation to the permit holder, which notice shall state the reasons for revocation. A revocation shall be subject to review by the city manager in the same manner as a denial of a permit application, and such review shall be deemed a necessary administrative remedy prior to seeking judicial relief.

(Ord. No. 7800-07, § 1, 9-6-07)

Sec. 24.70. - Violations and penalties.

- (1) A failure to obtain a wellhead protection permit by any person required to obtain such permit, a failure to comply with any of the requirements of this article, or a failure to comply with any condition imposed upon the issuance of a wellhead protection permit shall constitute a violation of this article.
- (2) Violations of this article shall be subject to punishment by a fine not to exceed \$500.00 per day. The city may take any appropriate enforcement action, pursuant to Section 1.12 of this Code and Article 7 of the Community Development Code, in any available judicial or administrative forum to enforce the provisions of this article.

(Ord. No. 7800-07, § 1, 9-6-07)

## EXHIBIT "F"

### CITY PROPERTY - AVAILABILITY OF UTILITIES

#### Potable Water Access

- For fire protection the Fire Department requires fire hydrants to come off a 6" water main. Note the locations of the 6" water mains because the water mains do reduce down to 4" water mains on both David Avenue and Elizabeth Ave (see map attached). The Fire Department will also require a certain amount of fire hydrants depending on the construction plans. Fire protection will also need to have a certain flow reached and inspected for.
- Potable water can be accessed from either Elizabeth Ave or David Ave. The system will need to be looped.

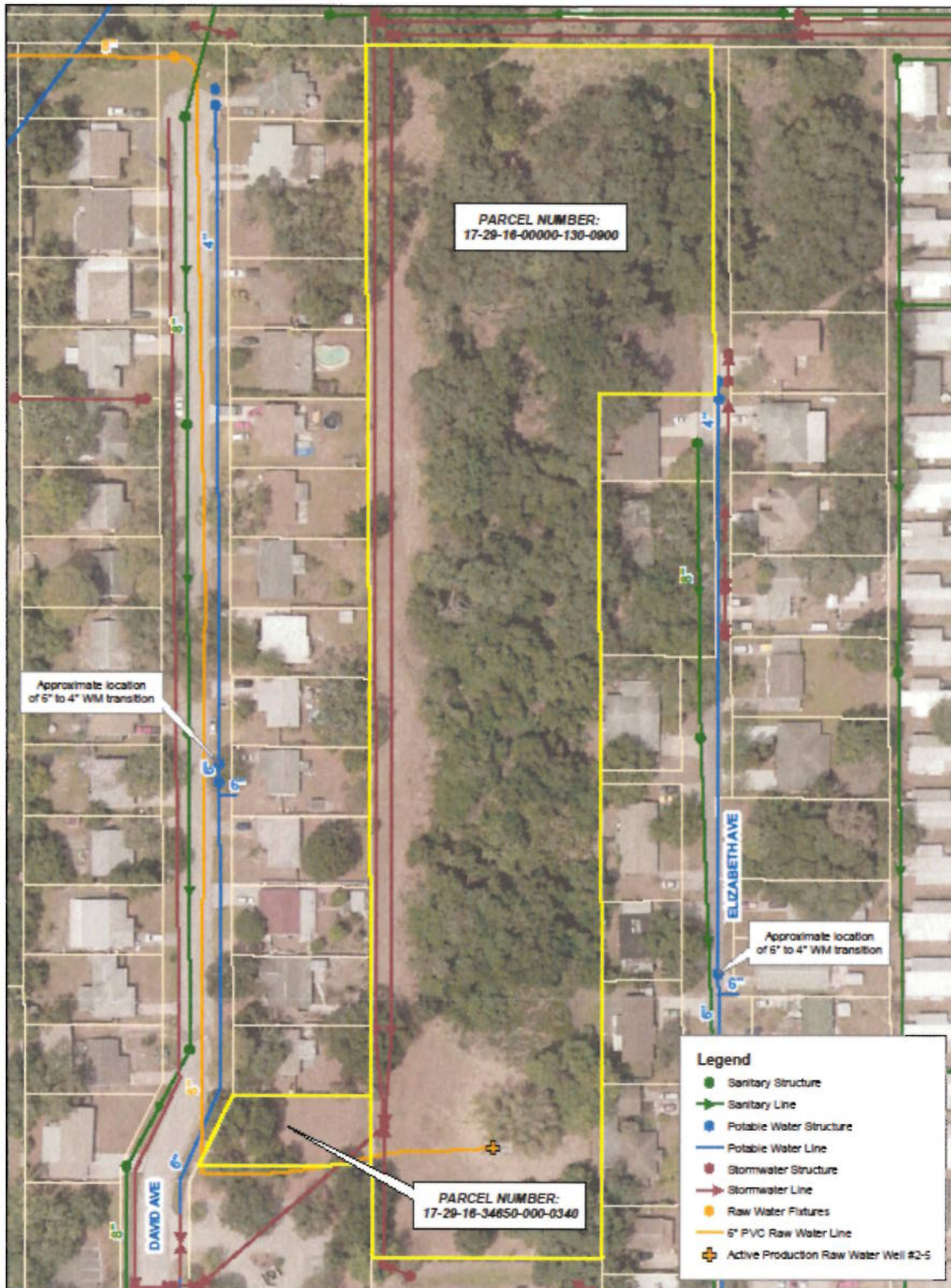
#### Sanitary Sewer Access

- Sanitary sewer can be accessed from either Elizabeth Ave or David Ave. The facility that the sanitary sewer is going to be able to handle this addition to the system.

CREATIVE CONTRACTORS acknowledges and agrees that the CITY has provided the above information based on its records and the best information available to it; however, the CITY makes no warranties as to the location or sufficiency of utilities for CREATIVE CONTRACTORS use of the Property or future development.



# EXHIBIT "F" (page 2)



**Exhibit "G"**

Lease form for Creative Contractors to lease back CREATIVE CONTRACTORS Property

**BUSINESS LEASE CONTRACT**

THIS LEASE CONTRACT entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), by and between the CITY OF CLEARWATER, FLORIDA, and Florida Municipality, as Lessor, and CREATIVE CONTRACTORS, INC., a Florida Corporation, as Lessee (individually referred to herein as "Party" or collectively as the "Parties").

**W I T N E S S E T H:**

That the Lessor does lease to the Lessee the following described property located in Pinellas County, Florida:

**See EXHIBIT "A" attached hereto and by this reference incorporated herein.**

Such property shall hereinafter be referred to as the "Leased Premises" or the "Demised Premises" or the "Leased Property."

**1. LEASE TERM.**

The term of this lease shall commence on the day of closing of that certain Contract for Purchase of Real Property by and between the Parties entered into the \_\_\_\_ day of \_\_\_\_\_, 2019 and shall remain in full force and effect for a period of Eighteen (18) months from the Effective Date ("Lease Term"). If Lessee is not in default of any lease provision, Lessee shall further have the privilege and option of terminating this Lease prior to its expiration upon giving Lessor not less than sixty (60) days written notice and fully paying any and all costs, including, but not limited to, rent, utilities, taxes and insurance expenses for which Lessee is responsible, through the effective date of termination.

**2. RENT**

(a) For the enjoyment and use of the Leased Premises referred to and described in Exhibit "A", Lessee covenants and agrees to pay to the Lessor, without demand, rent as provided herein. Rent payments shall begin to accrue on the Effective Date of this Lease. Lessee shall pay to Lessor monthly rent in the amount as indicated below, together with all applicable Florida and/or Federal Sales Tax due thereon.

(b) Commencing on the Effective Date, annual rent shall be paid in the amount of Forty Nine Thousand Eight Hundred and 68/100 Dollars (\$49,868.00) (the "Annual Rental Amount") computed by calculating a percentage/factor of seven point two eight percent (7.28%) of the appraised value of the parcel, which at the inception of this lease is valued at Six Hundred Eighty-Five Thousand and xx/100 Dollars (\$685,000.00) ("Appraised Value") which annual rent amount shall be payable in

advance in monthly installments. The first monthly rent installment of Four Thousand One Hundred Fifty-Five and 66/100 Cents (\$4,155.66) plus applicable Florida and/or Federal sales tax due thereon shall be paid to Lessor on the Effective Date, and the remaining annual rent installments shall be paid monthly, in advance, on or before the first day of the month during the term of this Lease Agreement. Said installments shall be paid when due, without demand, to the order and in the name as directed by Lessor. The first or any partial months' rent shall be prorated if the Effective Date does not fall on the first of the month or for any partial month.

### **3. SECURITY DEPOSIT.**

Lessee shall deposit with Lessor on the signing of this lease the sum of Four Thousand One Hundred Fifty-Five and 66/100 Cents (\$4,155.66) as security for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

### **4. USE OF PREMISES.**

The premises are leased to Lessee solely for the following uses and no other use can be made of the premises during the term without the written consent of the Lessor: The premises will be used by Lessee in continuance of its business operation as a construction company. Further, Lessee may not sublease the property.

### **5. UTILITIES.**

Water, sewer, electric and all other utilities of any kind shall be billed directly to Lessee and are or shall be individually metered for the subject premises. All deposits for such utilities shall be the sole responsibility of Lessee.

### **6. COMMON AREA MAINTENANCE AND TAXES.**

Lessee shall be responsible for the common area maintenance expenses the on the Leased Property, if applicable. If any ad valorem taxes, intangible property taxes, personal property taxes, or other liens or taxes of any kind are assessed or levied lawfully on the Leased Property, based on the Lessee's use of the Leased Property during the Lease Term, the Lessee agrees to pay all such taxes, assessments or liens, within thirty (30) days after receiving demand for same or within thirty (30) days after receiving written notice from the Lessor, whichever is sooner. In the event the Lessee fails to pay all such taxes assessed or levied on the Property within thirty (30) days after receiving written notice, the Lessor may, at its sole option, pay such taxes, liens, or assessments, subject to immediate reimbursement thereof together with any interest, calculated at the maximum rate allowed by law, and any administrative costs incurred by the Lessor. Failure of the Lessee to pay any taxes or assessments pursuant to this paragraph



will constitute a material default of this Lease.

**7. OBSERVANCE OF LAWS AND ORDINANCES.**

Lessee agrees to observe, comply with and execute promptly at its expense during the Lease Term, all laws, rules, requirements, orders, directives, codes, ordinances and regulations of governmental authorities and agencies and of insurance carriers which relate to its use or occupancy of the Leased Premises.

**8. ASSIGNMENT OR SUBLEASE.**

Lessee shall not, without first obtaining the written consent of Lessor, which Lessor may grant or withhold in its sole discretion, assign, mortgage, pledge, or encumber this lease, in whole or in part. This covenant shall be binding on the legal representatives of Lessee, and on every person to whom Lessee's interest under this lease passes by operation of law, but it shall not apply to an assignment or subletting to the parent or subsidiary of a corporate lessee or to a transfer of the leasehold interest occasioned by a consolidation or merger involving such lessee.

If the premises are sublet or occupied by anyone other than Lessee or current tenants, and Lessee is in material default hereunder, or if this lease is assigned by Lessee, Lessor may collect rent from the assignee, unauthorized subtenant, or unauthorized occupant, and apply the net amount collected to the rent herein reserved. No such collection shall be deemed a waiver of the covenant herein against assignment and subletting, or the acceptance of such assignee, subtenant, or occupant as Lessee, or a release of Lessee from further performance of the covenants herein contained.

**9. ALTERATIONS AND IMPROVEMENTS.**

The Lessee shall not make any structural alterations or modifications or improvements which are part of the Leased Property without the written consent of the Lessor, and any such modifications or additions to said property shall become the property of the Lessor upon the termination of this lease or, at Lessor's option, the Lessee shall restore the Leased Property at Lessee's expense to its original condition. The restrictions of this paragraph shall not apply to maintenance of the Leased Property, but shall apply to any change which changes the architecture or purpose of the property or which changes any of the interior walls of the improvements or which annexes a fixture to any part of the Leased Property which cannot be removed without damage thereto. In the event Lessee desires to make any alterations or modifications, written notice shall be given to the Lessor. Unless the Lessor objects to such proposals by notice to Lessee within twenty (20) days after written notice from Lessee, the proposal shall be deemed approved. Lessee shall have no power or authority to permit mechanics' or materialmen's liens to be placed upon the Leased Property in connection with maintenance, alterations or modifications. Lessee shall, within fifteen (15) days after notice from Lessor, discharge any mechanic's liens for materials or labor claimed to have been furnished to the premises



on Lessee's behalf. Not later than the last day of the term Lessee shall, at Lessee's expense, remove all of Lessee's personal property and those improvements made by Lessee which have not become the property of Lessor, including trade fixtures and the like. All property remaining on the premises after the last day of the term of this lease shall be conclusively deemed abandoned and may be removed by Lessor and Lessee shall reimburse Lessor for the cost of such removal.

#### **10. RISK OF LOSS.**

All personal property placed or moved in the premises shall be at the risk of the Lessee or owner thereof. The Lessor shall not be responsible or liable to the Lessee for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connected with the premises hereby leased or any part of the building which the Leased Premises are a part of or any loss or damage resulting to the Lessee or its property from bursting, stopped up or leaking water, gas, sewer or steam pipes unless the same is due to the negligence of the Lessor, its agents, servants or employees.

#### **11. RIGHT OF ENTRY.**

The Lessor, or any of its agents, shall have the right to enter said premises during all reasonable hours, to examine the same to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof, or of said building, or to exhibit said premises. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions, which do not conform to this agreement.

#### **12. RESTORING PREMISES TO ORIGINAL CONDITION.**

Lessee represents that the premises leased are in good, sanitary and tenantable condition for use by Lessee. Lessee's acceptance or occupancy of the Leased Premises shall constitute a recognition of such condition. Lessee hereby accepts the premises in the condition they are in at the beginning of this lease and agrees to maintain said premises in the same condition, order and repair as they are at the commencement of said term, and to return the premises to their original condition at the expiration of the term, excepting only reasonable wear and tear arising from the use thereof under this agreement. The Lessee agrees to make good to said Lessor immediately upon demand, any damage to water apparatus, or electric lights or any fixture, appliances or appurtenances of said premises, or of the walls or the building caused by any act or neglect of Lessee or of any person or persons in the employ or under the control of the Lessee.

#### **13. INSURANCE.**

Lessee agrees to comply with all terms, provisions and requirements contained in Exhibit "B" attached hereto and made a part hereof as if said document were fully set forth at length herein.



#### **14. MAINTENANCE.**

Lessor shall keep the foundation, outer walls, roof and buried conduits of the premises in good repair, except that the Lessor shall not be called on to make any such repairs occasioned by the negligence of the Lessee, its agents, express or implied invitees, or employees. Lessee shall keep the inside of said premises and the interior doors, windows and window frames of said premises in good order, condition and repair and shall also keep the premises in a clean, sanitary and safe condition in accordance with law and in accordance with all directions, rules and regulations of governmental agencies having jurisdiction. The Lessee shall be responsible for providing all light bulbs used on the premises. The plumbing facilities shall not be used for any other purposes than that for which they are constructed and no foreign substances of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this provision shall be borne by the Lessee. The heating and air-conditioning system and plumbing facilities shall be under the control of Lessee, and Lessee agrees that all operation, upkeep, repairs and replacements will be at Lessee's expense, except where the repairs or replacements shall be caused by the negligence or misuse by Lessor or its employees, agents, invitees, or licensees. In the event Lessor pays any monies required to be paid by Lessee hereunder, Lessor shall demand repayment of same from Lessee and Lessee shall make payment within ten (10) days of receipt of said demand. Lessee's failure to make such repayment within the ten (10) day period shall constitute a default under the terms of this lease and all monies due shall become additional rent.

#### **15. DESTRUCTION OF PREMISES.**

In the event the building should be partially or totally destroyed by fire, earthquake or other cause, either party may terminate this lease. Lessor shall have no obligation to rebuild.

#### **16. EMINENT DOMAIN.**

If the whole or any part of the premises hereby leased shall be taken by any public authority under power of eminent domain, then the term of this lease shall cease on the part so taken from the date title vests pursuant to such taking, and the rent and any additional rent shall be paid up to that day, and if such portion of the Demised Premises is so taken as to destroy the usefulness of the premises for the purpose for which the premises were leased, then from that day the Lessee shall have the right to either terminate this lease or to continue in possession of the remainder of the same under the terms herein provided, except that the rent shall be reduced in proportion to the amount of the premises taken. The parties agree that the Lessee shall not be entitled to any damages by reason of the taking of this leasehold or be entitled to any part of the award for such taking, or any payment in lieu thereof.

## **17. SUBORDINATION.**

This lease and the rights of the Lessee hereunder are hereby made subject and subordinate to all bona fide mortgages now or hereafter placed upon the said premises by the Lessor and any other owner provided, however, that such mortgages will not cover the equipment and furniture or furnishings on the premises owned by the Lessee. The Lessee further agrees to execute any instrument of subordination which might be required by mortgagee of the Lessor.

## **18. DEFAULT; REMEDIES.**

(a) The Lessee further covenants that, if default shall be made in the payment of rent, or any additional rent, when due, or if the Lessee shall violate any of the other covenants of this lease and fail to correct such default within fifteen (15) days after a written request by the Lessor to do so, then the Lessor may, at its option, deem this lease terminated, accelerate all rents and future rents called for hereunder and Lessee shall become a tenant at sufferance, and the Lessor shall be entitled to obtain possession of the premises as provided by law.

(b) In case the Leased Property shall be abandoned, as such term is defined by Florida Statutes, the Lessor, after written notice as provided by Florida Statutes to the Lessee, Lessor may (i) re-enter the premises as the agent of the Lessee, either by force or otherwise, without being liable to any prosecution or claim therefor, and may relet the Leased Property as the agent of the Lessee and receive the rent therefor and apply the same to the payment of such expenses as Lessor may have incurred in connection with the recovery of possession, reduction, refurbishing or otherwise changing or preparing for reletting, including brokerage and reasonable attorney's fees. Thereafter, it shall be applied to the payment of damages in amounts equal to the rent hereunder and to the cost and expenses of performance of the other covenants of Lessee as provided herein; or (ii) the Lessor may, at its option, terminate this lease by giving the Lessee fifteen (15) days' written notice of such intention served upon the Lessee or left upon the Leased Property, and the term hereof shall absolutely expire and terminate immediately upon the expiration of said fifteen (15) day period, but the Lessee shall nevertheless and thereafter be liable to the Lessor for any deficiency between the rent due hereunder for the balance of the term of this lease and the rent actually received by Lessor from the Leased Property for the balance of said term.

(c) The Lessor, at its option, may terminate this lease as for a default upon the occurrence of any or all of the following events: an assignment by Lessee for the benefit of creditors; or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee bankrupt; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; or the appointment of a receiver of the assets of Lessee; or the bankruptcy of the Lessee. Each of the foregoing events shall constitute a default by Lessee and breach of this lease.

(d) Lessor, at its option, may terminate this lease in the event the Clearwater

City Council determines at a duly constituted City Council meeting that the lease premises are needed for other municipal purposes and serves the Lessee with one hundred twenty (120) days-notice of such intended use.

**19. MISCELLANEOUS.**

(a) The Lessor shall have the unrestricted right of assigning this lease at any time, and in the event of such assignment, the Lessor shall be relieved of all liabilities hereunder.

(b) This contract shall bind the Lessor and its assigns or successors, and the Lessee and assigns and successors of the Lessee.

(c) It is understood and agreed between the parties hereto that time is of the essence of this contract and this applies to all terms and conditions contained herein.

(d) It is understood and agreed between the parties hereto that written notice sent by certified or registered mail, or hand delivered to the Lessee hereunder, shall constitute sufficient notice to the Lessee, and written notice sent by certified or registered mail or hand delivered to the Lessor shall constitute sufficient notice to the Lessor, to comply with the terms of this contract.

(e) The rights of the Lessor under the foregoing shall be cumulative, and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

(f) It is hereby understood and agreed that Lessee shall abide by all applicable rules, regulations and law regarding signs.

(g) It is understood that no representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the party making such representations or promises.

(h) It is hereby agreed that if any installment of rent or any other sum due from Lessee is not received by Lessor within five (5) days after such amount shall be due, Lessee shall pay to Lessor a late charge equal to five percent (5%) of such overdue amount. The Lessor shall not be required to accept any rent not paid within five (5) days subsequent of the date when due absent the simultaneous payment of this late charge. The requirement for a late charge set out herein shall not be construed to create a curative period or a grace period for the timely payment of rent.

**20. SUBROGATION.**

**The Lessor and Lessee do agree that each will cause its policies of insurance for fire and extended coverage to be so endorsed as to waive any rights of subrogation which would be otherwise available to the insurance carriers, by reason of any loss or damage to the**



Leased Property or property of Lessor. Each party shall look first to any insurance in its favor before making any claim against the other party. Nothing contained herein shall in any way be considered or construed as a waiver or release by the Lessor of any and all of the other covenants and conditions contained in this lease to be performed by the Lessee.

**21. ESTOPPEL LETTER.**

In the event Lessor shall obtain a loan from an institutional lender, and if the following shall be a requirement of such loan, the Lessee agrees to execute an estoppel letter in favor of the lender verifying the standing of the lease, the terms thereof, and all amounts paid thereunder and such other matters as may be reasonably requested.

**22. PARKING SPACES.**

Lessee shall have the right to use available parking.

**23. INDEMNIFICATION.**

The Lessee shall indemnify the Lessor against all liabilities, expenses and losses incurred by the Lessor arising out of or related to the Leased Premises or Lessee's use or occupancy thereof, to include but not being limited to (a) failure by the Lessee, or its agents, to perform any provision, term, covenant or agreement required to be performed by the Lessee under this agreement; (b) any occurrence, injury or personal or property damage which shall happen in or about the Leased Property or appurtenances resulting from the occupation of, condition, maintenance, construction on or of the operation of the Leased Property; (c) failure to comply with any requirements of any governmental authority or insurance company insuring the Leased Property or its contents; (d) any security agreement, conditional bill of sale or chattel mortgage or mechanic's lien connected with Lessee, its obligations or operations, filed against the Leased Property, fixtures, equipment or personalty therein; and (e) any construction, work, alterations or improvements by Lessee on the Leased Property. Such indemnification shall include reasonable attorney's fees for all proceedings, trials and appeals.

**24. "AS IS" CONDITION.**

The Lessee accepts the Leased Premises on an "as is" basis, and Lessor shall have no obligation to improve or remodel the Leased Premises.

**25. CONSTRUCTIVE EVICTION.**

Lessee shall not be entitled to claim a constructive eviction from the premises unless Lessee shall have first notified Lessor in writing of the condition or conditions giving rise thereto and, if the complaints be justified, unless Lessor shall have failed within a reasonable time after receipt of such notice to remedy such conditions.

**26. JANITORIAL EXPENSES.**

Lessee shall obtain janitorial services for the Leased Premises at its expense.

**27. SEVERANCE.**

The invalidity or unenforceability of any portion of this lease shall in nowise affect the remaining provisions and portions hereof.

**28. CAPTIONS.**

The paragraph captions used throughout this lease are for the purpose of reference only and are not to be considered in the construction of this lease or in the interpretation of the rights or obligations of the parties hereto.

**29. NO HAZARDOUS MATERIALS.**

The Lessee herewith covenants and agrees that no hazardous materials, hazardous waste, or other hazardous substances will be used, handled, stored or otherwise placed upon the property or, in the alternative, that such materials, wastes or substances may be located on the property, only upon the prior written consent of the Lessor hereunder, and only in strict accord and compliance with any and all applicable state and federal laws and ordinances. In the event such materials are utilized, handled, stored or otherwise placed upon the property, Lessee expressly herewith agrees to indemnify and hold Lessor harmless from any and all costs incurred by Lessor or damages as may be assessed against Lessor in connection with or otherwise relating to said hazardous materials, wastes or substances at any time, without regard to the term of this lease. This provision shall specifically survive the termination hereof.

**30. CONFORMANCE WITH LAWS.**

Lessee agrees to comply with all applicable federal, state and local laws during the life of this Contract.

**31. ATTORNEY'S FEES.**

In the event that either party seeks to enforce this Contract through attorneys at law, then the parties agree that each party shall bear its own attorney fees and costs unless otherwise specifically provided for herein.

**32. GOVERNING LAW.**

The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Pinellas County, Florida.



IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date set forth above.

CITY OF CLEARWATER, FLORIDA

Countersigned:

\_\_\_\_\_  
George N. Cretekos  
Mayor

By: \_\_\_\_\_  
William B. Horne II  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Laura Lipowski Mahony  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

Attest:

Creative Contractors, Inc.

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_