

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 26, 2016 Consent [X] Regular []
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Reimbursement Agreement between Palm Beach County and ICM VI-WPB 1, L.P. (Property Owner) in the amount of \$109,872.64.

Summary: The property owner proposed to the Water Utilities Department (WUD) the redesign of the County-owned water and wastewater service connections for a remodeled section of an existing shopping center on the NE corner of Haverhill Road and Okeechobee Blvd (Property). The redesign was to be undertaken on behalf of the County, provided the Property Owner was reimbursed for certain costs to which the County agreed. The proposal included the relocation of existing wastewater and water lines from under the building foundation which is externally problematic for maintenance purposes. Additionally, the existing pipe was found to be in poor condition and unsuitable for connection. WUD staff subsequently informed the Property Owner's Engineer that a connection to the substandard wastewater main was not acceptable and that the wastewater infrastructure would have to be relocated.

Following the completion of the construction, the Property Owner transferred the ownership of the improvements to County via a Bill of Sale, provided comprehensive utility record drawings for the entire shopping center, and granted utility easements over all County-owned facilities on the property. The Reimbursement Agreement provides for the payment of \$109,872.64 for the redesign and construction that was undertaken by the Property Owner. This reimbursement represents fifty percent (50%) of the total costs of the redesign and construction of the wastewater system. The improvements are beneficial to the County and the public in that they will result in more reliable wastewater service to the Property and adjacent properties, will improve access as the portion of the existing wastewater main, which was constructed under the building on the Property was relocated, and will avoid the need for County construction projects in the future. District 2 (MJ)

Background and Justification: After determining the location and condition of the existing wastewater infrastructure onsite, WUD and the Property Owner reached agreement on the redesign and construction of wastewater infrastructure located at the project site by the Property Owner. The Property Owner's lease commitments to new tenants made the installation by WUD infeasible. At the time of the agreement, a firm amount of the construction cost was not available and not realistic, due to unclear scope, missing record drawings and field data. WUD subsequently approved the revised plans that were submitted by the Property Owner's Engineer prior to proceeding with work onsite. During construction, the design had to be revised several times due to unanticipated field conditions that were encountered. The Property Owner has subsequently transferred the ownership of the completed improvements to County via a Bill of Sale, provided comprehensive utility record drawings for the entire shopping center, and granted utility easements over all County owned facilities on the property. The Reimbursement Agreement will provide partial reimbursement to the Property Owner for the redesign and construction that was undertaken.

Attachments:

- 1. Four (4) Original Reimbursement Agreements

Recommended By: Jim Stiles 12-31-15
Department Director Date

Approved By: Sharon R. B. 1-15-16
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	<u>\$109,873</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>\$109,873</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4011 Dept 721 Unit W031 Object 6547

Is Item Included in Current Budget? Yes **X** No

Reporting Category **N/A**

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The project will be funded by Water Utility Department User fees

C. Department Fiscal Review: Libra m ovest

III. REVIEW COMMENTS


A. OFMB Fiscal and/or Contract Development and Control Comments:


Sheng Bao

Dr. J. Jacobus
Contract Development and Control
B. Wheeler - 12-16

B. Legal Sufficiency:

Legal Sufficiency.


Assistant County Attorney



C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

REIMBURSEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as "County," and ICM VI - WPB 1, L.P., a Georgia limited partnership, hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, Property Owner owns certain property located at the northeast corner of Haverhill Road and Okeechobee Boulevard and further identified on **Exhibit "A"** hereto (the "Property"); and

WHEREAS, during the redevelopment of the Property, it was discovered that the existing wastewater main providing wastewater service to the Property, which was constructed prior to the County becoming the wastewater service provider to the Property, was in extremely poor condition, and also was not constructed in accordance with the design and location requirements of the Palm Beach County Water Utilities Department ("PBCWUD"), including part of the main being constructed under a building on the Property; and

WHEREAS, Property Owner has reconstructed approximately 450 feet of the existing wastewater main and appurtenant facilities (the "New Wastewater Main") which was conveyed to PBCWUD following completion of construction and is currently being utilized by PBCWUD to provide wastewater service to the Property and other adjacent properties; and

WHEREAS, the New Wastewater Main is beneficial to the County and the public in that it will provide more reliable wastewater service to the Property and adjacent properties, will improve access as the portion of the existing wastewater main which was constructed under the building on the Property was relocated, and will avoid the need for County construction projects in the future; and

WHEREAS, the County wishes to reimburse a portion of the overall project costs related to the construction of the New Wastewater Main to the Property Owner.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and County hereby covenant and agree as follows:

1. **Recitals.** The foregoing statements are true and correct and are incorporated herein by specific reference.
2. **Construction of New Wastewater Main.** Property Owner has constructed and installed, or caused to have constructed and installed, the New Wastewater Main. The New Wastewater Main is more specifically depicted in **Exhibit "B"**, which is attached hereto and incorporated herein.
3. **Reimbursement.** Attached hereto and incorporated herein as **Exhibit "C"** is a report of the costs to construct the New Wastewater Main (the "Costs"). In accordance with this Agreement, County shall reimburse Property Owner fifty percent (50%) of the Costs, for a total of One Hundred Nine Thousand, Eight Hundred Seventy Two and .64/100 dollars (\$109,872.64). Said reimbursement shall occur within thirty (30) days of the Effective Date of this Agreement, which shall be the date of approval by the Palm Beach County Board of County Commissioners.
4. **Release.** Subject to the receipt of funds from the County set forth in Section 3 above, Property Owner, its entities, directors, officers, employees, principals, agents and servants, hereby releases, acquits, and forever discharges any and all claims it may have against the County, its departments, divisions, elected officials and employees, for any additional payments or credits related to the construction

of the New Wastewater Main.

5. **Remedies.** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.
6. **Successors and Assigns.** The County and the Property Owner each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the County nor the Property Owner shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.
7. **Waiver.** The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.
8. **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
9. **Notice.** All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to the Property Owner, shall be mailed or delivered to the Property Owner at:

ICM VI – WPB 1, LP
c/o ICM Realty Group
445 Bishop Street
Suite 100
Atlanta, GA 30318
Attn: Andrew Webb

and if to County, shall be mailed or delivered at:

Palm Beach County Water Utilities Department
8100 Forest Hill Boulevard
P.O. Box 16097
West Palm Beach, FL 33416-6097.
Attn: Department Director

10. **Amendment and Modification.** This Agreement may only be amended modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.
11. **Entirety of Agreement.** The County and the Property Owner agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.
12. **Palm Beach County Office of the Inspector General.** Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section

2-421 - 2-440, as may be amended. The Inspector General’s authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

13. **No Third Party Beneficiary.** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the Property Owner.

14. **Non-Discrimination.** Property Owner warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

The Property Owner has submitted to County a copy of its non-discrimination policy, which is consistent with the above paragraph, as contained in Palm Beach County Resolution R2014-1421, as amended, or in the alternative, if Property Owner does not have a written non-discrimination policy, or one that conforms to the County policy, Property Owner has acknowledged through a signed statement provided to County that it will conform to County’s non-discrimination policy as contained in R2014-1421, as amended.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Property Owner and County have executed or have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

SHARON R. BOCK, CLERK
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mary Lou Berger, Mayor

[SEAL]

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: Jim Stiles
Department Director

WITNESSES:

PROPERTY OWNER:
ICM VI-WPB 1, L.P.
a Georgia limited partnership

By: ICM VI MANAGEMENT, LLC
a Georgia limited liability company
its General Partner

Geoff Halverson
Type or Print Name
Stephanie Sinden
Type or Print Name
Stephanie Sinden
Type or Print Name

By: _____
Signature
VICE PRESIDENT
Title
Andrew Webb
Typed or Printed Name

[Corporate
Seal]

STATE OF MINNESOTA
COUNTY Hennepin

NOTARY CERTIFICATE

The foregoing instrument was acknowledged before me this 10 day of DECEMBER
20015 by ANDREW WEBB. He/she is personally known to me or has produced
_____ as identification.

Tina L. Wigen
Signature of Notary

Tina L. Wigen
Typed, Printed, or Stamped Name
of Notary

Notary Public

Serial Number

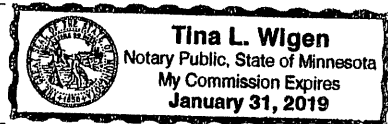
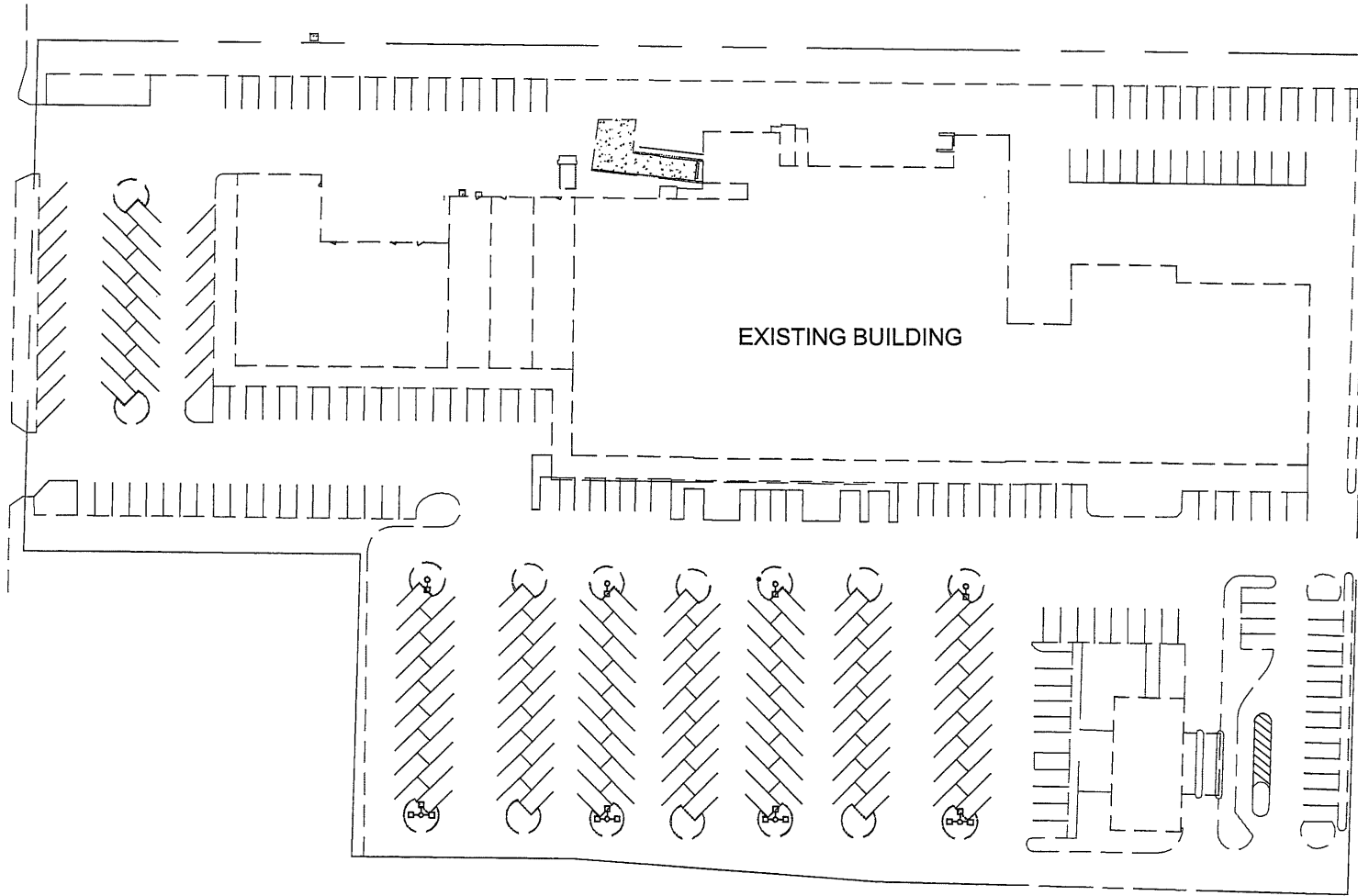


EXHIBIT "A"
DEPICTION OF PROPERTY

HAVERHILL ROAD



4895 OKEECHOBEE BOULEVARD
SECTION 36, TOWNSHIP 43, RANGE 42

EXHIBIT A

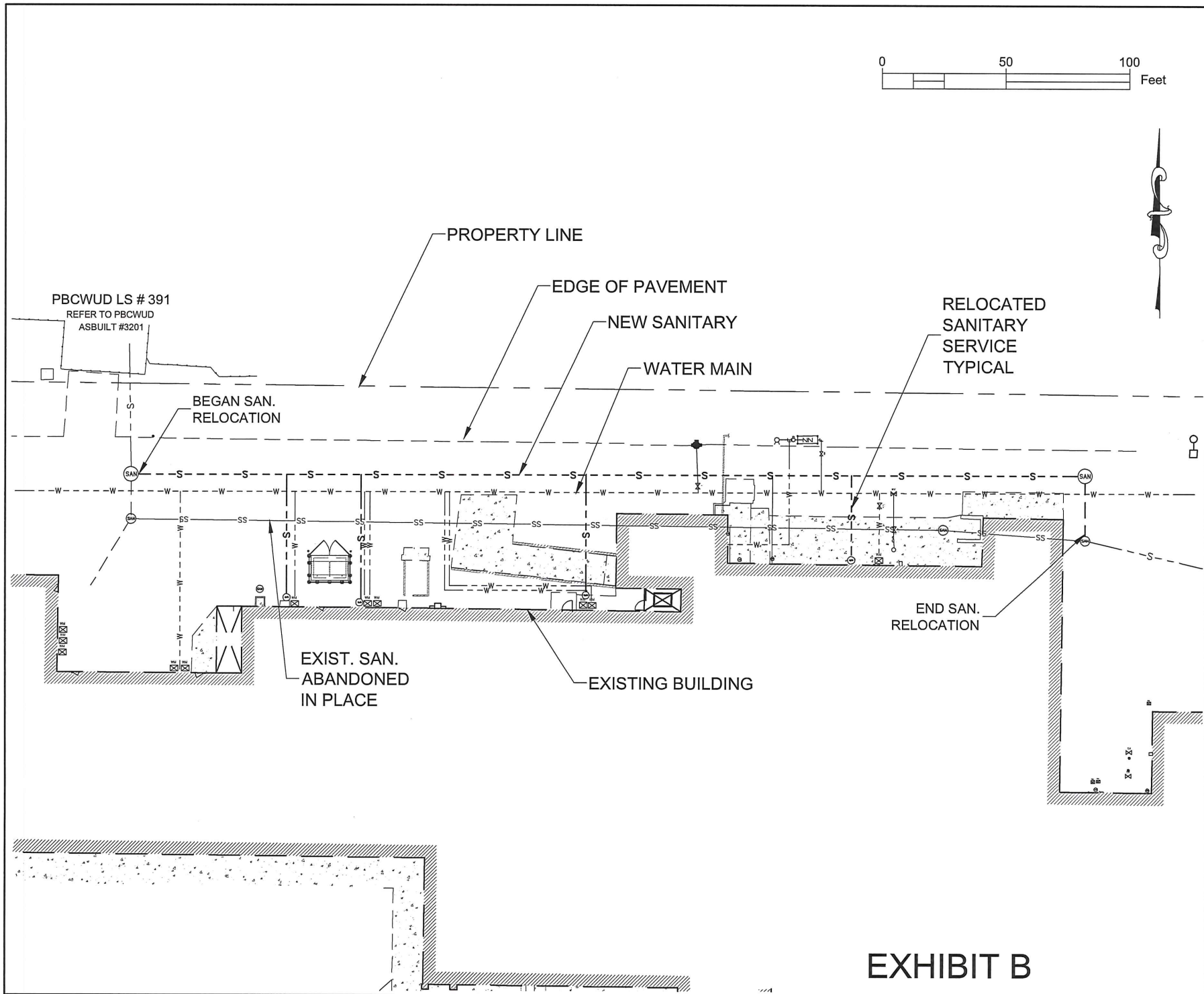
Bowman Consulting Group, Ltd.
301 SE Ocean Blvd.
Stuart, FL 34994
Phone: (772) 288-1413
Fax: (772) 220-7881
www.bowmanconsulting.com
© Bowman Consulting Group, Ltd.

GFS MARKETPLACE
4895 OKEECHOBEE BLVD, SUITE #633
WEST PALM BEACH, FL 33401

DATE
12/7/15
PROJECT NO.
13151
SHEET
A

Bowman
CONSULTING
Certificate of Authorization License No. 30462

EXHIBIT "B"
DEPICTION OF NEW WASTEWATER MAIN



Bowman
CONSULTING
Certificate of Authorization License No. 30462

Bowman Consulting Group, Ltd.
301 SE Ocean Blvd.
Stuart, FL 34994
Phone: (772) 283-1413
Fax: (772) 220-7881
www.bowmanconsulting.com
© Bowman Consulting Group, Ltd.

GFS MARKETPLACE
4895 OKEECHOBEE BLVD, SUITE #633
WEST PALM BEACH, FL 33401

DATE
12/7/15
PROJECT NO.
13151
SHEET
B

EXHIBIT B

EXHIBIT "C"
COSTS OF NEW WASTEWATER MAIN



Summary of Costs

EXHIBIT C

Project Name: GFS Marketplace - Sewer Main Relocation

The following is a SUMMARY of design, survey, and construction costs:

Item#	Description	Total
1	Permitting Fees	\$ 1,000.00
3	Underground Sanitary Relocation Work	\$ 168,031.00
4	Change Order #1 (Added Sanitary Lateral Work)	\$ 30,104.28
5	Change Order #2 (Added Survey Work)	\$ 3,707.00
6	Contractor OH&P	\$ 16,903.00
Grand Total:		\$ 219,745.28

APPLICATION AND CERTIFICATE FOR PAYMENT

PAGE 1

TO:	FROM:	APPLICATION #:	003
ICM VI - WPB 1, LP	Schmid Construction	PERIOD:	02/28/2015
c/o Brian Roehn	1655 E. Highway 50, Suite 300	CONTRACT #:	
	Clermont, FL 34711	CONTRACT DATE:	
Att: Mike Haanling		DESCRIPTION:	
PROJECT:	NAME:	Pay app #3	
1320001	GFS WPB / Goodwill Sanitary work		

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for Payment, as shown below, in connection with the Contract Continuation Sheet attached.

The present status of the account for this Contract is as follows:

CHANGE ORDER SUMMARY

	# of Changes	Total Amount(\$)
Authorized Changes:	2	33,811.28
Potential Changes:	0	0.00

ORIGINAL CONTRACT SUM (\$)	185,934.00
Net change by Change Orders (\$)	33,811.28
CONTRACT SUM TO DATE (\$)	219,745.28

SCHEDULED VALUE (\$)	219,745.28
TOTAL COMPLETED & STORED TO DATE (\$)	219,745.28
RETAINAGE (0.00%) (\$)	0.00
TOTAL EARNED LESS RETAINAGE (\$)	219,745.28
LESS PREVIOUS APPLICATIONS FOR PAYMENTS (\$)	216,038.28
CURRENT PAYMENT DUE (\$)	3,707.00
BALANCE TO FINISH, PLUS RETAINAGE (\$)	0.00

The undersigned Contractor certifies that to the best of his knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by him for Work for which previous Certificates for Payment were issued and payments received from the owner, and that current payment shown herein is now due.

CONTRACTOR:
BY: Brian Roehn
Brian Roehn / Sr. Project Manager

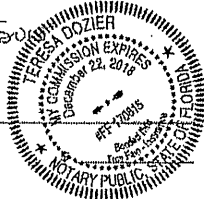
DATE: 2/26/15

State of: Florida County of: Lake

Subscribed and sworn to before me this 27th of February, 2015

Notary Public: Terese Dozier

My Commission expires: December 22nd, 2018



ARCHITECT'S CERTIFICATE FOR PAYMENT

AMOUNT CERTIFIED:

(Attach explanation if amount certified differs from the amount applied for.)

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that the Work has progressed to the point indicated; that to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents; and that the Contractor is entitled to payment of the AMOUNT CERTIFIED.

ARCHITECT:
By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

PAGE 2

TO:
ICM VI - WPB 1, LP
c/o Brian Roehn

From:
Schmid Construction
1655 E. Highway 50, Suite 300
Clermont, FL 34711

Project Name: GFS WPB / Goodwill Sanitary work
Project #: 1320001
Application #: 003
Period: 02/28/2015

A	B	C	D	E	F	G		H		I
	DESCRIPTION	SCHEDULED VALUE (\$)	PRIOR COMPLETED AMOUNT (\$)	THIS PERIOD COMPLETED AMOUNT (\$)	PRESENTLY STORED AMOUNT (\$)	(D+E+F) COMPLETED & STORED TO DATE (\$)	(G/C) PROGRESS PERCENT	(C-G) BALANCE TO FINISH (\$)	RETAINAGE PERCENT	RETAINED AMOUNT (\$)
1	Permit	1,000.00	1,000.00	0.00	0.00	1,000.00	100.00 %	0.00	0.00 %	0.00
2	Underground sanitary work	168,031.00	168,031.00	0.00	0.00	168,031.00	100.00 %	0.00	0.00 %	0.00
3	OH&P	16,903.00	16,903.00	0.00	0.00	16,903.00	100.00 %	0.00	0.00 %	0.00
4	CO #1 added sanitary work	30,104.28	30,104.28	0.00	0.00	30,104.28	100.00 %	0.00	0.00 %	0.00
5	CO #2 added survey	3,707.00	0.00	3,707.00	0.00	3,707.00	100.00 %	0.00	0.00 %	0.00
Totals:		219,745.28	216,038.28	3,707.00	0.00	219,745.28	100.00 %	0.00		0.00

CHANGE ORDER DETAIL

PAGE 3

TO:
ICM VI - WPB 1, LP
c/o Brian Roehn

From:
Schmid Construction
1655 E. Highway 50, Suite 300
Clermont, FL 34711

Project Name: GFS WPB / Goodwill Sanitary work
Project #: 1320001
Application #: 003
Period: 02/28/2015

Changes		Days	Amount (\$)
Authorized:			
CO# TBD	Change - - Scope Change 02: CO #1 change sanitary main location and increased water line size - 12/11/2014	2	30,104.28
CO# TBD	Change - - Scope Change 03: CO #2 additional surveying - 02/27/2015	0	3,707.00
		2	33,811.28
Potential:			
- None			