

RESOLUTION NO. 2015- 41

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A REVOCABLE LICENSE FOR USE OF REAL PROPERTY WITH THE U.S. DEPARTMENT OF VETERANS AFFAIRS FOR THE CONTINUED OPERATION OF THE ST. AUGUSTINE COMMUNITY BASED OUTPATIENT CLINIC AT 1955 U.S. 1 SOUTH.

RECITALS

WHEREAS, the U.S. Department of Veterans Affairs (“VA”) operates the St. Augustine Community Based Outpatient Clinic (“CBOC”) at 1955 U.S. 1 South in space leased from the County; and,

WHEREAS, the Board of County Commissioners approved a Purchase and Sale Agreement with Lowe’s Home Improvement Inc. (“Lowe’s”) on November 1, 2011, and 1955 U.S. 1 South was sold to Lowe’s April 1, 2013; and,

WHEREAS, the VA has not secured another location for the CBOC and will not be able to vacate 1955 U.S. 1 South by the March 31, 2015, deadline; and,

WHEREAS, the terms of the lease back from Lowe’s to the County requires the building to be vacated by March 31, 2015 or enter into an extended term at a rate of \$53,333 per month for six months; and,

WHEREAS, under the proposed Revocable License, the VA is agreeing to pay: (1) \$53,333 per month for the six month period, (2) \$100,000 per month in the event of any holdover beyond the six month period; (3) reimbursement to the County for all operational costs outlined in the Revocable License; and (4) a management fee to the County for administration of the Revocable License and,

WHEREAS, it is in the best interest of the health and welfare of the veterans residing in St. Johns County and the citizens of St. Johns County to approve the proposed Revocable License, attached hereto as **Exhibit A**, incorporated by reference and made a part hereof, to allow the CBOC to continue to operate at its current location for an additional six months so the VA can set up a temporary clinic.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY FLORIDA, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The terms of the Revocable License are hereby approved in substantially the form attached, and the County Administrator, of designee, is authorized to execute said Revocable License.


Section 3. The Clerk of the Courts of St. Johns County is instructed to file the Revocable License in the Public Records of St. Johns County, Florida.

Section 4. If any portion of this Resolution is for any reason held or declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions this Resolution. If this Resolution or any provisions hereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

Section 5. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED, this 17 day of February, 2015.

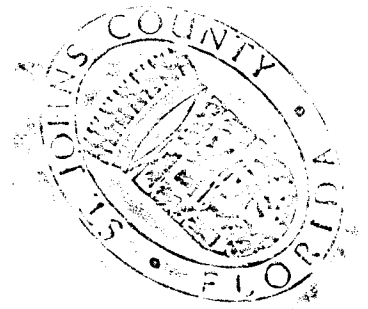
**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA.**

By:  _____
Priscilla L. Bennett - Chair

ATTEST: Cheryl Strickland, Clerk

By:  _____
Deputy Clerk

RENDITION DATE 2/20/15



REVOCABLE LICENSE FOR USE OF REAL PROPERTY
GRANTED TO
THE U.S. DEPARTMENT OF VETERANS AFFAIRS
BY
ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA
LICENSE NO. 573-15-002

This Revocable License ("License") is made and entered into this the ____ day of _____, 2015, by and between St. Johns County, a political subdivision of the State of Florida (hereinafter "Licensor"), and the U.S. Department of Veterans Affairs (hereinafter "Licensee").

WITNESSETH:

WHEREAS, Lowe's Home Center, Inc. is the owner of property, including all improvements, located at 1955 U.S. 1 South, St. Augustine, FL 32086 ("Property"); and

WHEREAS, Licensor currently manages all operations at the Property; and

WHEREAS, Licensee has been, and seeks to continue, occupying a portion of the Property for the purpose of providing healthcare services to Veterans in the St. Augustine, Florida area; and

WHEREAS, Licensor agrees to license to Licensee said portion of the Premises, subject to the terms and conditions contained herein.

NOW THEREFORE, the Licensor and Licensee agree as follows:

1. **Grant of License.** Licensor hereby grants to Licensee a revocable license to occupy the 13,831 net usable square feet (NUSF), together with the 80 existing parking spaces, Licensee currently occupies at the Property ("Licensed Premises"). Licensee shall continue to occupy 9,990 NUSF for operation of the Community Based Outpatient Clinic ("CBOC") and 3,841 NUSF for operation of the Hospital-based Home Care ("HBHC").

2. **Relationship.** Licensee acknowledges and agrees that this License is not a lease, and nothing in this License creates a tenancy relationship between Licensor and Licensee during the Term. By virtue of this License, the relationship between Licensor and Licensee is that of a licensor and licensee, and not that of a landlord and tenant.

3. **Term.** The term of this License shall commence on April 1, 2015 ("Effective Date") and automatically expire on September 30, 2015 ("Expiration Date"), unless earlier revoked or terminated by the mutual written consent of both parties hereto. There are no extensions of the

term available under this License, unless provided in writing and executed by duly authorized representatives of each party hereto.

4. Surrender. On or before the Expiration Date, Licensee shall remove all of its property and vacate the Licenses Premises. Any failure by Licensee to timely surrender the Licensed Premises as provided herein shall constituted an unauthorized holdover.

5. License Fee. The consideration for this License shall be the sum of Fifty Three Thousand Three Hundred Thirty Three Dollars (\$53,333) per month, which shall be payable in arrears on the first day of each month, for the term of this Agreement. In the event that Licensee should fail to surrender the Licensed Premises on the Expiration Date and continue to occupy the Licensed Premises (holdover), the fee shall automatically increase to the sum of one hundred thousand dollars (\$100,000) per month, which shall be payable in arrears on the first day of each month beyond the Expiration Date.

6. Operational Costs. In addition to the License Fee described above, Licensee shall compensate Licensor for Licensor's performance of the operational services identified in Exhibit A, attached hereto. Such compensation shall be payable in arrears, and in the corresponding amounts provided in Exhibit A.

7. Other Costs. Licensee shall be solely responsible for all "at cost" amounts associated with the Licensor's performance of any services for Licensee beyond those described in Exhibit A, and required for continued operation under this License. Such costs shall include but are not limited to equipment replacement. However, Licensor and Licensee agree that they will need in each instance, to reach a prior agreement in writing regarding any such performance activities that Licensor will perform for such "continued operation," before Licensor will be required or expected to perform such services.

8. Reasonable Cooperation with the Media. The parties agree that before making any statements to the press or other third parties regarding this License, the party proposing to do so shall first (absent an emergency situation) coordinate in good faith with the underlying program and public affairs offices of other party, so that a unified, agreed-upon statement can be released, to the fullest extent possible.

9. Notice. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, addressed as provided in this paragraph and deposited, postage prepaid, in a public mail box maintained by the U.S. Postal Service. All notices to be given pursuant to this License shall be addressed as follows:

If to Licensee to:

Jessica Kaplan, Director, Real Property Service (003C1E), Office of Construction & Facilities Management (003C), Department of Veterans Affairs, 425 I Street, N.W., Washington, D.C. 20001 with a copy sent via email to Allyson.Lee@va.gov

If to St. Johns County to:

Michael Wanchick, County Administrator, 500 San Sebastian View, St. Augustine, Florida 32084 with a copy sent via email to mablount@sjcfl.us.

10. Inspection. Licensee shall have the right to inspect the licensed space prior to the effective date of the license, to ensure the condition of the space continues to meet Licensee's needs and requirements, and is otherwise safe and appropriate for Licensee's use.

11. Laws and Ordinances. In the exercise of any privilege granted by this License, Licensee shall not engage in any behavior or conduct that would otherwise impinge on Lowe's ability to comply with all applicable Federal, State, and local law related to Lowe's interest in the underlying real property. Notwithstanding this provision, this License shall be governed, construed and enforced in accordance with Federal law, and if no such law exists, then applicable State and local law, and shall at all times be subject to, the Anti-Deficiency Act (31 U.S.C. §§ 1341 and 1501).

12. Damage. Except as may be otherwise provided herein, no property of Lowe's or St. Johns County shall be destroyed, displaced, or damaged by Licensee in the exercise of the privilege granted by this License, without the prior written consent of the Lowe's or St. Johns County.

13. Liability. The liability, if any, of Licensee for injury or loss of property, or personal injury or death in connection with this License, shall be governed exclusively by the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680).

14. Operation. Licensee shall confine its activities to the Licensed Premises, and shall refrain from damaging or impairing the space, or jeopardizing the safety of persons or property.

15. Amendments. There shall be no amendments to or departure from the terms of this License without the prior written consent of the parties.

16. Assignment, revocation, and abandonment. This License is unassignable and shall be revocable or terminable only by prior written consent of all parties hereto. Upon revocation or termination of this License, Licensee shall restore the property to substantially the same condition as existed prior to the effective date of this License, excepting any normal wear and tear.

A. Notice: if one or more parties intend to revoke the subject agreement, a minimum of thirty (30) days prior notice must be provided to all parties, in writing; and,

B. If such revocation occurs, and Licensee has paid for any item or service it will not benefit from using due to the revocation, then the party that has received those monies shall return to Licensee, its pro rata share of the funds within ten (10) business days of the revocation notice.

17. Special Conditions. Special conditions applicable to this License are set forth in Exhibit B, attached hereto.

18. Time Is Of The Essence. Time is of the essence for this Agreement. If the expiration of any time period set forth herein falls on a Saturday, Sunday or legal holiday, such time period shall be deemed to expire on the next day which is not a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 P.M., EST.

19. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Appendices, Addendums and Exhibits. All documents which are referred to in this Agreement, and which are attached hereto or specifically references and labeled, shall be incorporated in and constitute a part of this License.

21. Applicable and Governing Law. The liability, if any, of the United States for injury or loss of property, or personal injury or death shall be governed exclusively by the provisions of the Federal Tort Claims Act (28 U.S.C §§ 2671-2680). Additionally, this License shall be governed by and enforced in accordance with the laws of the United States and, to the extent such laws do not apply, then by the laws of the State of Florida without regard to its principles of conflicts of law.

22. Entire Agreement. All terms and conditions with respect to this Agreement are expressly contained herein and supersede all previous oral and written statements and documents, and the Licensor agrees that no representative or agent of the Government has made any representation or promise with respect to this License not expressly contained herein. This License may be amended, modified or altered only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

23. Authority to Execute. The parties warrant that they have the authority to enter into this Agreement. The parties further warrant that the individual signing below is duly authorized to execute and deliver this Agreement on behalf of each respective party. Licensor recognizes and agrees that only an authorized Contracting Officer of the Licensee shall have the authority to agree to any binding decisions or amendments relating to this License.

**REVOCABLE LICENSE NO. 573-15-002
ST. AUGUSTINE, FL**

**EXHIBIT A
OPERATIONAL COSTS**

1. As noted in Paragraph 6 of the License, the parties agree that during the term of this License, St. Johns County will provide VA with the operational services identified below. The frequency of the below described services shall vary as denoted in the chart below; some constitute one-time payments, monthly fixed payments, and/or monthly variable costs, as shown in the chart. In return, VA agrees to compensate St. Johns County in arrears, once the service has been rendered, and upon the County providing VA with either an invoice for the service from the vendor, or other official documentation of the County confirming the cost of the completed service. The following table lists the services the County will provide to VA, and indicates the frequency that the County will provide such services to VA during the term of the License.

TABLE 1A

Service	One-Time/Recurring Monthly	Fixed/Variable	Estimated Cost	Comment
Floor Waxing	One Time	Fixed	\$6,178.00	Will require one more waxing prior to vacating
Backflow Preventer Test	One Time	Fixed	\$1,080.00	Annual Test
Fire Alarm Test	One Time	Fixed	\$880.00	Annual Test
Trash	Recurring	Fixed	\$230.00	
Bio-Waste	Recurring	Fixed	\$266.00	
Pest Control	Recurring	Fixed	\$250.00	
Air Filters	Recurring	Fixed	\$174.96	
VA Specific supplies	Recurring	Fixed	\$166.95	VA specific janitorial supplies
Chlorine for AC Tower	Recurring	Fixed	\$32.03	
Fire Alarm Monitoring	Recurring	Fixed	\$323.52	
AC Tech	Recurring	Fixed	\$5,000.00	
Water Sewer	Recurring	Variable	\$4,834.16	Annual Avg/mo. but will use meter
Teco Gas	Recurring	Variable	\$2,113.83	Annual Avg/mo. but will use meter

**REVOCABLE LICENSE NO. 573-15-002
ST. AUGUSTINE, FL**

**EXHIBIT B
SPECIAL CONDITIONS**

1. **Revocation Process.** The parties agree that this License is revocable during the term of the License, provided the Director, Office of Construction and Facilities Management, Real Property Service, U.S. Department of Veterans Affairs (“VA”), and ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA (“**St. Johns County**”), mutually agree in writing, and determine that doing so is necessary due to a change in law, avoiding an adverse impact on VA’s or the Licensor’s mission and operations, or a national security event (Revocation Notice). The revocation shall not become effective until thirty (30) days from the date that the last party that is authorized to bind both VA and St. Johns County acknowledges or signs the Revocation Notice .

INITIALS: _____
VA SJC