

3-D



City Council Agenda Item
Meeting of December 1, 2015

TO: The Honorable Mayor and Members of the City Council
FROM: James R. O'Connor, City Manager
DATE: November 20, 2015

SUBJECT: License Agreement #2015-LA-0247 – Anita Astrachan – Dock & Boatlift Constructed on City-Owned Submerged Lands – 1 Starfish Drive

REQUESTED BY: City Manager/Public Works Department

The following is requested as it relates to the above-referenced agenda item:

- Request Council review and approval based on the attached supporting documentation.
- No action required. (Information only)



DEPARTMENTAL CORRESPONDENCE

TO: James R. O'Connor, City Manager
DEPT: City Manager

VIA: Monte K. Falls, PE, Director
DEPT: Public Works *ME*

FROM: David Gay, PSM, Chief Surveyor *DG*
DEPT: Public Works

DATE: November 16, 2015

RE: **License Agreement #2015-LA-0247**
Anita Astrachan
Dock & Boatlift Constructed on City-Owned Submerged Lands
1 Starfish Drive

Background:

As a condition of the referenced proposed dock and boatlift the City is requiring that a license agreement be executed for use of City-owned submerged lands behind 1 Starfish Drive. Please note that the river bottom behind 1 Starfish Drive is owned by the City and currently license agreements are being required for all new improvements. City Council's approval is required as the license area is on city-owned land.

Recommendation:

- Place this item on the December 1, 2015 City Council agenda;
- Execute a license agreement for construction of a residential dock and boatlift over city-owned submerged lands at 1 Starfish Drive.

Analysis:

Strengths: Affords the City liability protection from incidents occurring on the City-owned submerged lands.

Weaknesses: None

Opportunities: Allows the adjacent property owner the ability to construct docks, boatlifts and pilings on the City-owned submerged land, providing them with enhanced boating opportunities and potentially increasing property values.

Threats: The homeowner's failure to maintain the licensed facilities could result in future code enforcement or litigation activities.

Attachments

DRG/ntn

T:\License Agreements\2015-LA-0247 Astrachan_1 Starfish Dr\Agenda_Recommend Approval_JOConnor_Nov 16 2015.docx

LICENSE AGREEMENT FOR USE OF CITY REAL PROPERTY
(RESIDENTIAL DOCKING FACILITIES — VERO ISLES PLAT NO. 2)
(Project #2015-LA-0247)

This License Agreement (hereinafter "Agreement") was made and entered into the date last written below by and between the **City of Vero Beach, Florida**, a Florida municipal corporation, whose mailing address is **P.O. Box 1389, Vero Beach, FL 32961-1389** (hereinafter "City"), and **Anita Goldmuntz Astrachan, as Trustee of the Anita Goldmuntz Astrachan Amended and Restated Trust dated November 26, 2008**, whose mailing address is **1 Starfish Drive, Vero Beach, FL 32960** (hereinafter "Licensee"). For and in consideration of the mutual promises, covenants, and understandings herein contained, the parties agree as follows:

1. *Premises.* Licensee has requested permission to use certain real property of the City that is situated adjacent to Licensee's residential real property, the location and description of such City real property being as more fully described in Exhibit "A" attached hereto and incorporated herein (hereinafter "Premises"), for purposes of constructing and maintaining a dock, boat lift, and pilings for non-commercial purposes as well as nonexclusive use of the canal and waterway wherein the Premises are situated for ingress and egress and other lawful purposes.
2. *License.* City hereby grants a license to Licensee to occupy, utilize, and maintain the Premises for the purposes specified in section 1 above and pursuant to the terms and conditions of this Agreement (hereinafter "License"). This License shall be subject to and shall in no way whatsoever diminish the City's right of entry to the Premises by City's employees, contractors, and agents in performance of their duties at any time. The City Manager is authorized to administer the terms and conditions of this Agreement and License for and on behalf of the City, including, but not limited to, matters regarding enforcement and termination.
3. *Improvements.* No improvements, installations, or equipment of any kind or nature shall be constructed or installed on the Premises by or for Licensee without prior review and written approval by the City, as well as compliance with all other reviews, permits, and approvals required by any applicable code, ordinance, law, rule, or regulation. Licensee shall be limited to those approved improvements, installations, and equipment existing on the Premises at the time this Agreement and License are approved and only those additional improvements, installations, and equipment specifically approved by the City in writing. Upon written notice from the City, Licensee shall, at its own cost and expense, immediately remove any improvement, installation, or equipment made or installed without first obtaining all required approvals and permits and repair, clean, and restore the Premises to a reasonably good condition acceptable to the City.
4. *Use of Premises.* Licensee shall occupy, use, and maintain the Premises only for the purposes specified in section 1 above and shall not occupy, use, or maintain or permit the occupation, use, or maintenance of the Premises or any part thereof for any unlawful or illegal purpose, any commercial use, or in such manner

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as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any existing or future code, law, rule, requirement, order, ordinance, or regulation.

5. *Termination.* Each party shall have the right and discretion to terminate this Agreement and License with or without cause pursuant to the following:

(a) Except as provided otherwise in this Agreement, the terminating party shall provide the other party written notice of termination at least Ninety (90) days prior to the effective date of the termination.

(b) Should the City determine that the public interest requires expedited termination of this Agreement and License, which determination shall be solely in the City's discretion, the City shall endeavor to provide Licensee written notice of termination at least Fourteen (14) days prior to the effective date of such expedited termination. However, the City may dispense with or reduce the aforesaid notice period should the City determine that the public interest requires more immediate termination.

(c) Except as otherwise agreed by the parties in writing, whenever termination of this Agreement and License is noticed by either party, Licensee shall, at its own cost and expense, remove or cause to be removed from the Premises all improvements, installations, and equipment and repair, clean, and restore the Premises to a reasonably good condition acceptable to the City on or before the termination effective date.

(d) If Licensee fails or refuses to remove or cause the removal of any improvement, installation, or equipment, and/or fails to repair, clean, and restore the Premises by the specified or agreed termination effective date, or fails or refuses to do so when such improvement, installation, or equipment was made or installed without all required written approvals or permits, or if the City has determined that the public interest requires expedited or immediate removal the City may, at Licensee's expense, complete the removal and repair, cleaning, and restoration of the Premises or contract for completion of all or part of such work. Licensee waives any and all right to contest the City's right to recover all such removal, repair, cleaning, and restoration costs and expenses from Licensee. The provisions of this section shall survive termination of this Agreement and License.

6. *Maintenance.* Licensee shall be solely responsible, at its own expense, for maintaining the Premises and all improvements, installations, and equipment in good order and repair, in a safe, clean, secure, sanitary, and presentable condition, and in compliance with the provisions of all applicable codes, ordinances, laws, and regulations. The City shall have no responsibility for maintenance of the Premises or any improvements, installations, or equipment thereon or therein.

7. *No Assignment.* Licensee shall not directly or indirectly assign, lease, sublease, sublicense, hypothecate, sell, mortgage, encumber, or transfer this Agreement or License, the Premises, or any interest in this Agreement or License or use of the Premises. Any such action or attempted action shall be deemed void ab initio and without effect.

8. *Transfer of Licensee's Real Property.* At least Thirty (30) days prior to transfer of any interest in Licensee's real property abutting the Premises, Licensee shall either:

(a) Notify the City Manager of Licensee's intent to terminate this Agreement and License and comply with all of the applicable requirements contained in section 5 above; or

(b) If the proposed transferee desires to occupy and use the Premises, notify the City Manager of Licensee's intent to terminate this Agreement and License and require and facilitate the proposed transferee's application to the City for a new license agreement between the proposed transferee and the City. Licensee acknowledges that the grant or denial of any such application is solely in the City's discretion and determination and shall not give rise to any City liability whatsoever to Licensee, the proposed transferee, or any other person or entity. Absent a City approved license agreement with the proposed transferee, Licensee shall comply with all of the applicable requirements contained in section 5 above unless otherwise agreed by the parties in writing.

(c) In either instance, (a) or (b) above, the City may prepare and record in the public records at Licensee's expense a termination of this agreement and the license. Licensee shall be responsible for and promptly reimburse City for the cost of such recording.

No transfer of any or all of Licensee's interest in the abutting real property shall relieve Licensee of any responsibility or obligation under this Agreement unless and until Licensee has complied with the requirements of this section or the Agreement and License have been otherwise terminated as provided in this Agreement.

9. *Assumption of Risk; Release and Indemnification.* For and in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration paid by City to Licensee, the receipt and sufficiency of which is hereby acknowledged, Licensee agrees as follows:

(a) Premises "As Is." Licensee accepts the condition of the Premises as is and recognizes and hereby expressly and fully assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition or use of or access to the Premises or the canal or waterway. City has not made and makes no warranty of any kind whatsoever as to the condition of the Premises and canal or waterway or their fitness for any particular purpose. This express assumption of risk by Licensee is made for and on behalf of Licensee and Licensee's employees, agents, guests, contractors, subcontractors, and all other invitees.

(b) *Release and Indemnification (Premises).* Licensee hereby releases and forever discharges City, its elected officials, officers, employees, and agents (cumulatively "Released Parties"), and agrees to indemnify and hold harmless the Released Parties from and against any and all liabilities, claims, demands, damages, actions, lawsuits, costs, and expenses, of any kind or nature, including, but not limited to, costs of investigation and attorneys' fees and costs through trial and appeal, arising out of, incidental to, or in any way connected with the condition of, use of, or access to, the Premises, canal and waterway, any improvement, installation, or equipment thereon or therein, or otherwise arising under this Agreement or the License. LICENSEE UNDERSTANDS AND AGREES THAT THIS RELEASE AND INDEMNIFICATION INCLUDES ANY AND ALL CLAIMS BASED ON

THE NEGLIGENCE, ACTIONS, OR INACTION OF THE CITY OR ANY OTHER RELEASED PARTY AND INCLUDES ANY OTHER CAUSE OR CONDITION WHATSOEVER, AND COVERS, BUT IS NOT LIMITED TO, ANY CLAIMS FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE.

(c) *Indemnification (Use)*. Licensee agrees to indemnify and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including, but not limited to, costs of investigation and attorneys' fees and costs through trial and appeal, arising out of, incidental to, or in any way connected with Licensee's use, occupancy, or maintenance of the Premises, canal or waterway, or any act or omission of Licensee or any employee, representative, agent, relative, guest, invitee, contractor, or sub-contractor of Licensee, or otherwise arising under this Agreement or the License.

(d) *Release and Indemnity (Public Improvements and Utilities)*. Licensee's release and agreement to indemnify and hold the Released Parties harmless shall also include any claim for damage that any utility, whether publicly or privately owned, may sustain or receive by reason of Licensee's use, occupancy, or maintenance of the Premises, canal or waterway, or any improvements, installations, or equipment of Licensee. Licensee waives all claims of any kind or nature whatsoever against the Released Parties for damages that Licensee may suffer by reason of the installation, construction, reconstruction, operation and/or maintenance of any public improvement or utility, whether presently in place or which may in the future be constructed or installed, including, but not limited to, any water and/or sewer mains, lines, pipes or other facilities, storm water structures, pipes or other facilities, electric lines, conduit or other facilities, and whether such damage is due to failure of any installation, natural causes, or from any other cause of whatsoever kind or nature.

(e) *Intent and Effect*. It is the intent and effect of the provisions contained in this section 9, and a condition in consideration for approval of this Agreement and granting of the License by the City, that Licensee's release and indemnification shall be and include a full and total release and indemnification of the Released Parties against any kind or nature of claim whatsoever that is or may be asserted by reason of or as a consequence of the City having granted permission to Licensee to occupy, use and maintain the Premises and use the canal and waterway. Licensee acknowledges and agrees that the provisions of this section 9 are provided as consideration and inducement for grant of the License hereunder and such License would not have been granted by the City absent the giving of such consideration by Licensee. Licensee's release and indemnification obligations shall survive the termination of this Agreement and License for any matter arising prior to the effective date of the termination or the date Licensee no longer occupies, uses, or maintains the Premises, whichever is later.

10. *Insurance*. Licensee shall at all times during the term of the License and at Licensee's own expense, procure and maintain liability insurance coverage to protect Licensee and the City against personal injury and property damage from an insurance company authorized to do business in the State of Florida providing protection for any and all claims for damages to persons or property as a result of or arising out of the occupancy, use, or maintenance of the Premises or the improvements, installations, and equipment in connection therewith or located thereon. Licensee understands and acknowledges that the obligation to provide and maintain the required insurance is a continuing responsibility of Licensee and failure to do so

will be deemed detrimental to the public interest and can result in immediate termination of this Agreement and the License. Licensee shall promptly provide proof of insurance to City upon request.

11. *No Interest in Premises.* Licensee understands and acknowledges that the License granted hereunder does not “run with the land”, whether as to the Premises, the canal or waterway, or Licensee’s abutting real property. The License provides Licensee with no leasehold or any other property interest in the Premises or the canal or waterway and merely provides permission, personal to Licensee, to occupy, use, and maintain the Premises and use the canal and waterway as stated herein solely at Licensee’s risk and at the City’s sufferance and convenience. This Agreement may be recorded in the public records of Indian River County at Licensee’s expense. Licensee agrees to promptly reimburse the City for the costs of such recording plus any administrative fee.

12. *Notices.* Any notice or request required or permitted pursuant to this Agreement shall be in writing and may be delivered personally, by courier such as FedEx, UPS, or Priority Mail, or by United States First Class registered or certified mail, return receipt requested. Such notices and requests may be provided to the respective party at their address set forth above. Any notice or request the delivery of which is refused by the recipient shall be deemed given as of the date it is mailed or sent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last entered below and the parties hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of execution of this Agreement duly authorized to execute this Agreement.

[SIGNATURE PAGES TO FOLLOW]

WITNESS:

Judith A Peace
Print Name: Judith A Peace

Tina Marie Maloney
Print Name: Tina Marie Maloney

LICENSEE:

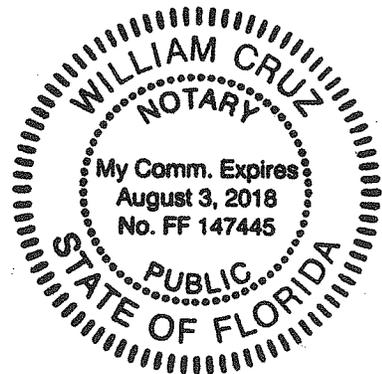
Anita Goldmuntz Astrachan
Anita Goldmuntz Astrachan

Date: 11/13/15

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing License Agreement for Use of City Real Property was acknowledged before me this 13th day of November 2015 by Anita Goldmuntz Astrachan, as Trustee of the Anita Goldmuntz Astrachan Amended and Restated Trust dated November 26, 2008. She is _____ personally known to me OR X produced Driver License as identification.

William Cruz
NOTARY PUBLIC
Print Name: William Cruz
Commission No.: FF 147445
My Commission Expires: August 3, 2018



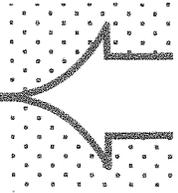
ATTEST:

CITY OF VERO BEACH:

Tammy K. Vock
City Clerk

Jay Kramer
Mayor

Date: _____



STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing License Agreement for Use of City Real Property was acknowledged before me this ____ day of _____ 2015 by Jay Kramer, as Mayor and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

NOTARY PUBLIC

Print name:

Commission No.

My Commission Expires:

Approved as to form and
legal sufficiency:



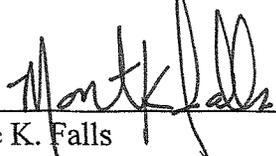
Wayne R. Coment
City Attorney

Approved as conforming to municipal
policy:



James R. O'Connor
City Manager

Approved as to technical requirements:



Monte K. Falls
Public Works Director

EXHIBIT "A"
PROPERTY DESCRIPTION
LICENSE TO USE CITY PROPERTY 2015-LA-0247
LOT 2, BLOCK 4, VERO ISLES PLAT NO. 2
Parcel #32-40-31-00002-0040-00002.0

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of the city owned submerged lands of the Indian River, as recorded in Deed Book 32, Page 549 of the Public Records of Indian River County and being more particularly bounded and described as follows:

The west 45 feet of the city owned submerged lands lying adjacent to Lot 2, Block 4, Vero Isles Plat No. 2;

Said license area containing 4,500 square feet more or less.



David R. Gay, PSM #5973



VERO ISLES, PLAT #2
 PLAT BOOK 3, PAGE 71
BLOCK 4
 LOT 3

SCALE 1" = 40'

INDIAN RIVER

CITY OWNED SUBMERGED LANDS
 DEED #18621 "A"
 DEED BOOK 32, PG.549
 DATED 10/15/1941

45.0'

LOT 2

100.0'

BOAT LIFT,
 DOCK, AND
 PILING AREA

← SUBJECT LICENSE AREA

STARFISH DRIVE
 (50' R/W)

1 STARFISH DRIVE

PARCEL ID # 32-40-31-00002-0040-00002.0

45.0'

LOT 1

THIS SKETCH IS NOT A SURVEY

David Gay 6/12/15
 DAVID GAY, PSM #5973 DATE

SHEET 2 OF 2

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION LICENSE TO USE CITY PROPERTY BLOCK 4, VERO ISLES, PLAT No. 2 1 STARFISH DRIVE	EXHIBIT "A"		REV. NO. 2 AUTHRZD. BY DAVID R. GAY
DEPARTMENT OF PUBLIC WORKS		CITY PROJECT NO. 2015-LA-247	DRW. BY DG	DATE 06/2015
ENGINEERING & SURVEY DIVISION		DATE 06/2015	CHKD BY MKF	DESCRIPTION

