

RESOLUTION NO. 2018-04

A RESOLUTION AUTHORIZING THE SALE OF UTILITIES COMMISSION PROPERTY, APPROXIMATELY ONE POINT EIGHT ACRES LOCATED AT THE S.E. CORNER OF SLATTON STREET AND MEADOW WOOD STREET, PLUS SOUTH MYRTLE AVENUE, PLUS CORNER OF S.R. 44 AND WEST CANAL STREET, IN NEW SMYRNA BEACH, FLORIDA; A POTENTIAL ASSET SALE DUE TO DETERMINATION OF NO IDENTIFIABLE UTILITY USE FOR THE FORESEEABLE FUTURE IN U.C. RESOLUTION NO. 28-78, RESCINDING ALL RESOLUTIONS, OR PORTIONS THEREOF, IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Utilities Commission, City of New Smyrna Beach, Florida (U.C.), was duly created and validly existing under and by virtue of Chapters 67-1754 and 85-503, Laws of Florida, as the governing body of the utility system of the City of New Smyrna Beach, Florida; and

WHEREAS, the Utilities Commission owns real property as described on **Exhibit "A"** hereto (tax identification parcel numbers listed below) (the "**Property**"); and

WHEREAS, the Utilities Commission has determined the ownership and/or future operation of the Property is not necessary, useful, or profitable in the operation of the Utilities Commission System (decommissioned and deconstructed) and that this Property has no identifiable utility use for the foreseeable future; and

WHEREAS, in accordance with U.C. Resolution No. 28-78, the U.C.'s GM/CEO and CFO, has made a written finding to declare and confirm the sale of Property will not adversely affect the revenues or system operations of the Utilities Commission as shown on Exhibit "B".

WHEREAS, James R. Davenport d/b/a Swining Bridge Park LLC was the winning bidder of ITB #2-15 and ITB 11-15 and a motion to accept the following bids was made and approved on May 18, 2015:

- \$50,000 for Parcels 7419-19-01-0020 and 7419-19-01-0040
- \$7,000 for Parcel 7449-08-01-0460
- \$12,000 for Parcel 7419-12-00-1090

WHEREAS, Swining Bridge Park LLC has not been legally formed and James R. Davenport has requested permission to assign the contract rights to Kymisal, LLC, a Florida limited liability company wholly owned by James R. Davenport and the Utilities Commission has approved the assignment;

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1: The Utilities Commission hereby declares approval and concurrence with the written finding from the U.C.'s GM/CEO and CFO, that this part of such System is no longer necessary, useful or profitable and the disposition of such property will not adversely affect the revenues or the operation of the system to such an extent that the Utilities Commission will fail to comply with the covenants of U.C. Resolution No. 28-78.

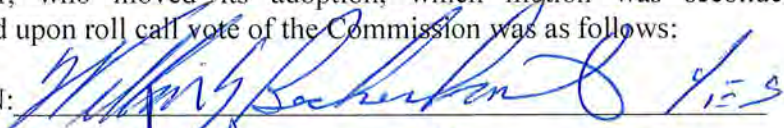


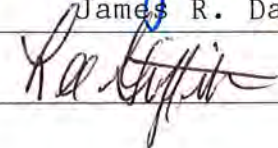
SECTION 2: The Utilities Commission does hereby approve and authorize the sale of the Property, specifically parcel numbers 7419-12-00-1090, 7419-19-01-0020, 7419-19-01-0040 and 7449-08-01-0460, through a competitive bid process, to Kysmal, LLC, as assignee of winning bidder James R. Davenport d/b/a Swining Bridge Park, LLC. Mr. William R. Mitchum, in his capacity as General Manager/CEO is hereby authorized to sign all documents necessary, desirable or appropriate to complete this transaction, including, but not limited to a Special Warranty Deed.

SECTION 3: If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4: All Resolutions, or portions thereof, in conflict herewith are hereby rescinded and superseded.

SECTION 5: After adoption by the Utilities Commission, this Resolution shall take effect immediately upon passage.

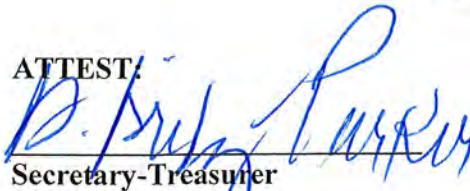
THE ABOVE AND FOREGOING RESOLUTION was introduced at a meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held on June 25, 2018 by Commissioner Britz-Parker, who moved its adoption, which motion was seconded by Commissioner Holcomb and upon roll call vote of the Commission was as follows:

CHAIRMAN:		YES
VICE-CHAIRMAN:		YES
SECY.-TREAS.:		YES
ASST. SECY.-TREAS.:	James R. Davenport	ABSTAINED
COMMISSIONER:		YES

APPROVED:


Chairman

ATTEST:


Secretary-Treasurer

SEAL

APPROVED AS TO FORM &
CORRECTNESS:

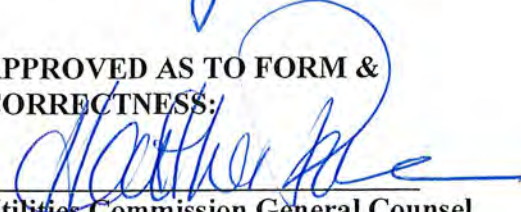

Utilities Commission General Counsel

EXHIBIT "A"

Property Description

PARCEL A:

Lot 2, Block 1, Map of the Cotton Shed Addition, according to plat thereof as recorded in Map Book 6, Page 180, of the Public Records of Volusia County, Florida.

PARCEL B:

Lot 4, Block 1, Map of the Cotton Shed Addition, according to plat thereof as recorded in Map Book 6, Page 180, of the Public Records of Volusia County, Florida.

PARCEL C:

That portion of the following described property lying Northerly of State Road 44 and Southerly of Canal Road, as now laid out:

The West 330 feet of the North 330 feet of the Southeast 1/4 of the Northwest 1/4 of Section 19, Township 17 South, Range 34 East, being also described as Lots 109 through 114, C. T. Roper's Subdivision, according to plat thereof as recorded in Map Book 4, Page 125, of the Public Records of Volusia County, Florida.

PARCEL D:

Lot 45, Block 1, Map of Dresser's Subdivision, according to plat thereof as recorded in Map Book 6, Page 239, of the Public Records of Volusia County, Florida.

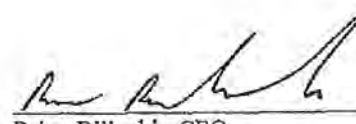
EXHIBIT "B"**FINDING IN WRITING RE: U.C. PROPERTY****MEMORANDUM**

To: Utilities Commissioners
From: General Manager/CEO and Director of Finance
Subject: Finding in Writing RE: U.C. Property
Date: December 9, 2014

Pursuant to the requirements of Resolution 28-78, Section 16 H. a., the original cost of the property listed below does not exceed one half of one percent of the value of the Utilities Commission's value of the gross plant investment of the System as shown in the most recent (completed) annual audit (2013), and is no longer necessary, useful or profitable in the operation of the System, nor will the disposition adversely affect the revenues of the System.

- 1) Lots 109 to 114 – Corner of S.R. 44 and West Canal St.
 (7419-12-00-1090 and portion of 7419-00-00-0470* –
 *must be split for sale, remaining portion has a lift station and is adjacent to electric transmission corridor)
- 2) Lots 40 and N 1/2 of Lot 41 – South Myrtle Ave.
 (7449-08-01-0400)
- 3) Lot 45 – South Myrtle Ave.
 (7449-08-01-0460)
- 4) Lots 2 and 4 – Southeast corner of Slatton St. and Meadow Wood St.
 (7419-19-01-0020 and 7419-19-01-0040)
- 5) Lot 977 – East side of Nordman Ave.
 (6336-01-00-9770)
- 6) Lot 4 – East side of Slatton St., North of Field Street
 (7419-19-03-0040)


 William R. Mitchum - GM/CEO


 Brian Bilinski - CFO