

CITY OF VERO BEACH, FLORIDA
MAY 3, 2011 9:30 A.M.
REGULAR CITY COUNCIL MEETING
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

A G E N D A

1. CALL TO ORDER

- A. Roll Call
- B. Invocation – Pastor Kent Hawkins/Cornerstone Christian Church
- C. Pledge of Allegiance

2. PRELIMINARY MATTERS

- A. Agenda Additions, Deletions, and Adoption
- B. Proclamations
 - 1. Officer John Morrison to be presented with a proclamation for receiving Treasure Coast Law Enforcement Officer of the Year
 - 2. ARC of Indian River County
 - 3. National Preservation Month – May 2011
 - 4. National Police Officers Week – May 15-21, 2011
 - 5. National Safe Boating Week – May 21-27, 2011
 - 6. Certificates to be presented to Vice Mayor Turner, Councilmember Fletcher and Councilmember Carroll for their completion of the 2011 Institute for Elected Municipal Officials
- C. Public Comment
- D. Adoption of Consent Agenda
 - 1. Regular City Council Minutes – April 19, 2011
 - 2. 26th Avenue Drainage Improvements Project – COVB Public Works Project No. 2010-03 – Requested by the Assistant City Engineer
 - 3. Request for Approval – Bid #110-11/PJW – Sub #10 – Requested by the Director of Electric T&D
 - 4. Wastewater Treatment Plant Clarifier Rehabilitation – Recommendation of Final Acceptance and Payment – City of Vero Beach Project No. WS07011 (Bid No. 070-07/JV) – Requested by the Water and Sewer Director

(The matters listed on the consent agenda will be acted upon by the City Council in a single vote unless any Councilmember requests that any specific item be considered separately.)

3. PUBLIC HEARINGS

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution of the City of Vero Beach, Florida, approving and authorizing the Execution of the third amended and restated Interlocal Agreement to be executed among the members of Florida Gas Utility; providing certain authorizations; providing an Effective Date; and providing certain other details and respect thereto. – Requested by the Director of Power Resources

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

6. CITY CLERK’S MATTERS

- A) Mr. David Johnson, President of HR Dynamics, would like to discuss the credentials of the final applicants for the City Manager’s position.

7. CITY MANAGER’S MATTERS

8. CITY ATTORNEY’S MATTERS

- A) Status Change – Assistant City Attorney
B) Dodgertown land swap – closing documents

9. CITY COUNCIL MATTERS

A. Old Business

1. FPL Report – Requested by Councilmember Heady
2. OUC Contract – Requested by Councilmember Heady
3. Water Sewer Update – Requested by Councilmember Heady
4. Continuation of discussion, consideration of Charter Officer positions – Requested by Councilmember Heady

B. New Business

1. GAI Electrical Consulting Contract – Requested by Vice Mayor Turner
2. Consideration of FPL offer – Requested by Councilmember Heady
3. Request for staff presentations on any errors in any electric utility presentation to City Council by any individual or group – Requested by Councilmember Heady
4. Discussion on City Manager position – Requested by Councilmember Heady

10. INDIVIDUAL COUNCILMEMBERS’ MATTERS

- A. Mayor Jay Kramer’s Matters

1. Correspondence
2. Committee Reports
3. Comments

B. Vice Mayor Pilar Turner's Matters

1. Correspondence
2. Committee Reports
3. Comments

C. Councilmember Tracy Carroll's Matters

1. Correspondence
2. Committee Reports
3. Comments

D. Councilmember Brian Heady's Matters

1. Correspondence
2. Committee Reports
3. Comments

1. Any item or items removed from meeting agenda.

E. Councilmember Craig Fletcher's Matters

1. Correspondence
2. Committee Reports
3. Comments

11. ADJOURNMENT

Council Meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

**CITY OF VERO BEACH, FLORIDA
MAY 3, 2011 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Roll Call

Mayor Jay Kramer, present; Vice Mayor Pilar Turner, present; Councilmember Craig Fletcher, present; Councilmember Brian Heady, present; and Councilmember Tracy Carroll, present **Also Present:** Monte Falls, Interim City Manager; Wayne Coment, Acting City Attorney and Tammy Vock, City Clerk

B. Invocation

Councilmember Craig Fletcher gave the invocation.

C. Pledge of Allegiance

The audience and the Council joined in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mr. Falls requested that two items be added to the agenda under City Manager's Matters, item 7-A) Update of Finance Director Position and item 7-B) FPL Letter of Intent.

Mr. Fletcher made a motion to approve the agenda as amended. Mrs. Turner seconded the motion and it passed unanimously.

B. Proclamations

- 1. Officer John Morrison to be presented with a proclamation for receiving Treasure Coast Law Enforcement Officer of the Year**
- 2. ARC of Indian River County**
- 3. National Preservation Month – May 2011**
- 4. National Police Officers Week – May 15-21, 2011**
- 5. National Safe Boating Week – May 21-27, 2011**
- 6. Certificates to be presented to Vice Mayor Turner, Councilmember Fletcher and Councilmember Carroll for their completion of the 2011 Institute for Elected Municipal Officials**

Mayor Kramer read and presented all of the Proclamations and Certificates.

C. Public Comment

Mr. Charlie Wilson thanked Mr. Heady and Mrs. Carroll for yesterday's motion to move forward with the FPL Letter of Intent (LOI). He also thanked Mrs. Turner because he knows her decision was difficult yesterday. He had some concerns with the delay from yesterday's meeting being another delay tactic. It clearly shows what they have in store for them. They will be delayed at every turn and receive partial information, sabotaged and undermined and delayed at every level by every staff executive that they have. It is unfortunate that they are faced with that situation. They will be faced with this from the City Management, from the City Attorney, by their Consultant and by a handful of detractors that will come up and throw things in their way that may or may not be true. He said that there is a person who keeps coming up to the podium and that is Mr. Ken Daige. He has a message for Mr. Daige and his message is when he talks to Council about doing their due diligence it takes huge courage. He said that this is the person who approved a \$20 billion dollar contract without reading it. Mayor Kramer stopped Mr. Wilson and told him that he did not want them getting into personal attacks. He said that if he has something constructive to say then say it. Mr. Wilson told him that he was addressing the detractors of something that they (Council) were trying to do. He went over a couple of things that would be coming up in the future. He felt that their negotiating team must be completely separated from staff members. He said unless they want delay after delay, they must separate completely this operation from staff. It is clear that after yesterday they should consider an outside City Manager. It is necessary that this Council receives advise that does not have loyalties to what has happened in the past. They also need to be very wary of their Consultant. If they accept the LOI, which he hopes that they do, then several months from now the issue will be "how much". This issue will be driven by an appraisal that is driven by staff's position. He urged them to get outside legal counsel. He has seen a lawyer and his lawyer's opinion concerning the referendum is different from the opinion that they have received. His lawyer feels that a referendum is not necessary. The other obstacle that they will face is the penalty clause in the OUC contract. He said for many months Mr. Heady has had to bring up the issue of this contract because this penalty was put in place as a "poison pill." He said that this will be another delay tactic and people are getting frustrated by the lack of activity.

Mr. Daryl Huber apologized for not being able to be at their meeting yesterday. He did not believe that the City Council or staff was doing anything to delay this process. They are looking at getting \$100 million dollars from FPL for the sale of their utilities. He wondered if everyone realized that there is a \$25 million dollar bond at the Power Plant that will have to come out of this \$100 million dollars. He said that there are also other things, so there is a question of how much of the \$100 million dollars will they be getting. The other question is who is going to pay for the purchase of the utilities. He said that it is going to be the City customers. He compared an FPL bill with a City of Vero Beach utility bill. He understands that FPL has agreed to employ the City employees for two years. He feels that it is good for the employees because they will become FPL workers and won't have to take the beating that they do now. He heard someone that spoke at yesterday's meeting say that they have called T&D to report an outage and got a recording instead of talking to a live person. He finds that hard to

believe. He also expressed that the employees in Customer Service work very hard. He was proud of the three Councilmembers who voted against the motion yesterday in order to fully look at things. He did not feel that Council was delaying anything. He cautioned that there were a lot of things going to happen if they sell this Plant.

Dr. Stephen Faherty went over the issues that have led up to where they are today. He asked the Charter Officers if they received a copy of the Gray Robinson draft letter that was done on April 28th and the City received it on April 29th.

Mr. Monte Falls, Interim City Manager, said that they did receive some information from Gray Robinson on April 29th, but he did not know exactly what Dr. Faherty was referring to.

Dr. Faherty asked if the Council received a copy of the email that was sent by Gray Robinson.

Mr. Falls expressed that he would be addressing that under his matters.

Dr. Faherty continued that he reviewed the document last night and is absolutely appalled. He said that in the agreement the electric utilities does not include the customers. The next thing made reference to the territorial agreement being modified. Then another paragraph they are discussing partial sale of the utilities. He asked what is trying to be slipped into this document. They also have many instances where the dates for completing the actions have been removed. Also, the sections relating to transferring assets without encumbrances has been removed. Things in this document reflect influences by FMPA. He said that FMPA wants retraction and this provides the opportunity for retraction. He felt that there is a lot of stuff slipped in here and it is not free and open.

Mr. J. Rock Tonkel, Grand Harbor, commented that he was not at the meeting yesterday because he would have just repeated what he said at their last meeting. He felt that this was a wonderful opportunity for the City. It will take some vision and living in the future. He requested the opportunity to make another public comment after Council has had discussions with the potential City Manager candidates. Mayor Kramer said that would be alright.

Mr. Dick Winger, member of the Finance Commission, commented that with the \$100 million dollar gross number that would represent \$6,000 for every person in this town. He commended the three Councilmembers who wanted to take the time to get the right response to the LOI. He said that this whole process will take a long time. He doesn't think that the City should be in the power business and he doesn't think that there are three Councilmembers trying to stall the process. He felt that they were trying to get the right price and oppose rash judgment.

Mrs. Linda Hillman commented that she was startled to hear that the City of Vero Beach has never evaluated their employees. She works for Publix Supermarkets and she has an

evaluation done (along with all the other Publix employees) every six months. It is good for the employer and the employee. It lets the employer know that his employee is giving their best and it lets the employee know if there is something that they need to be working on. She commended the Council for bringing this forward. She felt that the City should be run as a business.

Mrs. Hillman commented that she has not been at one of their meetings in some time so there were two other items that she wanted to bring up. She noted that several weeks ago a neighborhood on the beach was granted a speed limit reduction. In the neighborhood where she lives (Original Town) they have been asking for the last two years that a four way stop sign be installed in order to slow traffic down. She said that there have been several accidents in that area. They have also asked for the speed limit to be reduced to 25 mph and to this point they have not heard anything. She expressed that the other side of the bridge is getting their speed limit reduced and the mainland is not. She asked Council to please consider this because they need it to happen.

Mr. Falls asked Mrs. Hillman to give him a call. He said that a formal application needs to be filled out and submitted in order for the speed limit to be reduced. He would be happy to respond to any citizen's request.

Mrs. Hillman stated that there have been many workshops on this and she has been told it has been implemented, but it hasn't happened yet. She will call Mr. Falls.

Mrs. Hillman's last item for discussion was the bus hub. She said that the bus hub location hit another bump in the road. How many times has she stood before them and been criticized. She was very disappointed to read in the newspaper on April 12th that there was a meeting with Mr. Falls and Mayor Kramer about the proposed bus hub and she knew nothing about the meeting. The only way that her neighborhood knew anything about this was from the newspaper article. She has asked continually for open talks on this and she heard nothing from the City Manager or the Mayor.

Mayor Kramer explained that Mr. Jetson heard about the new proposed bus hub location and asked for a meeting. Mr. Jetson came to City Hall, and brought some other people with him. He said that Karen Diegel was at that meeting and she was working on getting a presentation together.

Mrs. Carroll reported that she has had many meetings with Mr. Falls and Ms. Diegel concerning the relocation of the bus hub. She also did not know about the meeting that Mrs. Hillman referred to until she read about it in the headlines. She was told the same thing that it was just suppose to be a one on one meeting with the Mayor. She referred to the photo that was on the front page of the newspaper that showed that regular working people are riding the buses. She expressed that Mr. Falls has been working very hard in trying to find another location for the bus hub. She expressed that there is another location being discussed for the bus hub and it is in the Industrial area.

Mrs. Hillman appreciated that everyone was working on this. She just asked for a phone call to let her know what is going on. She then asked how long is the temporary site plan issued for on the present location of the bus hub. This has been going on for well over a year. She wants to know what the plans are for her neighborhood. She reported that she was putting her rental properties up for sale because of all the stuff that is going on it is getting difficult to keep them up.

Mr. Ken Daige was thankful for all of the comments made up to this point on the FPL situation. They all have different concerns that Council has to listen to. The issues dealing with the last election is why most of the Council was elected. He said that yesterday three Councilmembers felt that they needed to further look at the LOI and have their Consultant help them. He doesn't think any staff is out to sabotage anything. They have been accommodating and do their very best to serve Council. He told Council that City residents expect them to do due diligence and lay everything out on the table. The decisions that they are going to make are going to affect them many years down the road. Just look at the facts and figures. This has become very emotional and folks are depending on the Council to do the right and just.

D. Adoption of Consent Agenda

Mrs. Turner pulled item 2D-3) off of the consent agenda.

Mr. Fletcher made a motion to adopt the consent agenda as amended. Mrs. Carroll seconded the motion and it passed unanimously.

- 1. Regular City Council Minutes – April 19, 2011**
- 2. 26th Avenue Drainage Improvements Project – COVB Public Works Project No. 2010-03 – Requested by the Assistant City Engineer**
- 3. Request for Approval – Bid #110-11/PJW – Sub #10 – Requested by the Director of Electric T&D**

Mrs. Turner commented that this offer states that it is in accordance with the terms and conditions of Waukesha Electric. She asked Mr. Coment if he has reviewed these terms and conditions and how do they differ from their standard terms.

Mr. Wayne Coment, Acting City Attorney, stated that he has read through the terms and he would not have necessarily written them the way they are because he likes the City terms better, but in light of the work that they perform and the experience of the company, he did not have any problems with the agreement.

Mrs. Turner asked him if he was willing to initial these terms and conditions. Mr. Coment answered yes. Mrs. Turner said that is a procedure that she would like to see come before them if they have any contractual documents that are taking a departure from their standard format that the City Attorney has initialed any variations.

Mr. Coment felt that there were some things that they could tighten up on in the Request for Proposal (RFP) process. They want to make sure that their terms are clear to the people who are submitting bids that the City's terms would be used.

Mr. Fletcher asked Mrs. Turner if she was looking for the City Attorney to sign off that he has also reviewed the document.

Mrs. Turner explained that is what she is looking for when they depart from the standard terms that they normally use.

Mrs. Carroll recalled that yesterday a gentleman spoke about the recurring power outages that he keeps having. She wondered if these replacement parts had anything to do with this on-going problem.

Mr. Randall McCamish, Electric T&D Director, did not think so. He said that this substation is the Central 10 substation and the gentleman that spoke yesterday was near Grand Harbor and they are still waiting for the switchgear for that particular substation.

Mrs. Turner made a motion noting that the City Attorney has approved these terms and conditions that the request for Bid #110-11/PJW-Substation #10 be accepted. Mr. Fletcher seconded the motion and it passed unanimously.

4. Wastewater Treatment Plant Clarifier Rehabilitation – Recommendation of Final Acceptance and Payment – City of Vero Beach Project No. WS07011 (Bid No. 070-07/JV) – Requested by the Water and Sewer Director

This item was approved under the consent agenda.

3. PUBLIC HEARINGS

None

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution of the City of Vero Beach, Florida, approving and authorizing the Execution of the third amended and restated Interlocal Agreement to be executed among the members of Florida Gas Utility; providing certain authorizations; providing an Effective Date; and providing certain other details and respect thereto. – Requested by the Director of Power Resources**

The City Clerk read the Resolution by title only.

Mr. Jim Stevens, Director of Power Resources, stated that they are members of Florida Gas Utilities and in 2010 they transferred their capacities to OUC as part of the contract. They have continued to be members of Florida Gas Utilities and should that contract ever

terminate the gas capacity comes back to the City of Vero Beach. As a member of Florida Gas Utilities all members are required to approve this Resolution.

Mr. Fletcher asked if he was in the process of studying how this would be transferred to FPL.

Mr. Stevens assumed it would be the same way that they transferred it to OUC.

Mr. Falls added that is one of the negotiated items that they will be working on.

Mrs. Turner wondered if they had any idea on the transfer costs that they may incur with this contract.

Mr. Stevens reported that he did not believe that there would be any costs incurred to transfer this. He explained that in order to be a user of the gas in the pipe line they have to own capacity in the pipe line. He said that the City does own capacity in that pipe line.

Mrs. Turner asked what is the amount of the capacity that they own is.

Mr. Stevens explained that there are two different contracts and the FTS1 is eight thousand three million cubic feet and FTS2 is five thousand one hundred and fifty six cubic feet and the use varies from month to month.

Mr. Heady explained that Mr. Stevens is saying that the use varies from month to month and Mrs. Turner's question had to do with capacity.

Mr. Stevens made it clear that the capacity does not change, the uses change.

Mr. Fletcher thought they bought fuel as a btu rating as opposed to cubic feet.

Mr. Stevens explained that they pay for it as btu as opposed to cubic feet.

Mr. Fletcher made a motion to approve the Resolution. Mrs. Turner seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes and Mayor Kramer yes.

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

6. CITY CLERK'S MATTERS

- A) Mr. David Johnson, President of HR Dynamics, would like to discuss the credentials of the final applicants for the City Manager's position.**

Mr. David Johnson expressed that the Council has narrowed their search down to four candidates for the new City Manager. He suggested that they begin their interview process with Mr. Kevin Sullivan.

Mrs. Turner commented that there has been some question as to whether Mr. Falls is considered a candidate for this position. She met with him privately and he told her that he did not wish to be a candidate for this position. She asked Mr. Falls if he wants to be considered a candidate and if he does would he please submit his resume to the Council so that he can be considered properly.

Mr. Falls stated that he did not ask for the position to be the Interim City Manager. Back in October 2010, the former City Manager retired and the Council asked him if he wanted to fill in, which he did. The current Council seated today affirmed that decision once they were seated. Since that time he has allotted approximately 30% more hours required than his normal schedule to fill these duties and he has done that without complaint. He has tried to carry out the Council's directions to the best of his ability. He has told each Councilmember individually that he was not going to fill out a formal application for the City Manager position. He would do whatever Council feels is in the best interest of the City. His work agreement as Interim City Manager states that if his duties as Interim City Manager are no longer required he will return to the position of Public Work's Director, which he has held for twenty years. He is proud to serve the City of Vero Beach in those two capacities. It has really been an experience being the Interim City Manager and he looks forward to helping the City in whatever way he can in the future. He only asks that during these trying times that they all treat each other with respect and professionalism. This sums up what he has told them all individually. He has not filled out an application to be the City Manager, nor does he intend to do so. He wishes them the best in their decisions and he has said over and over that his goal is to serve the City in the matter that the City Council wishes him to do.

Mr. Heady commented that President Lyndon Johnson in a speech said that he will not serve as President if he were nominated. He was not hearing that from Mr. Falls, what he is hearing is that if Council chooses to choose him that he will serve as City Manager. He asked Mr. Falls if he was correct. If he nominated Mr. Falls and he won would he serve in his current capacity.

Mr. Falls stated in his current capacity as Interim City Manager he will serve in that position until the Council appoints someone else to that post. Mr. Heady said so if we appoint you, you will take the job. Mr. Falls said that he would do like any of the other candidates would do and he would talk to them about the details.

At this time, Mr. Falls excused himself from the meeting.

Mr. Kevin Sullivan went over his background (application on file in the City Clerk's office). He has been married for 29 years to his wife Maggie. They have three children, with the youngest child being five years old. He went over his education background and said that he has a Masters degree in business.

Mr. Fletcher noted that Mr. Sullivan has a lot of background in finances, which is an area that they need a lot of help in.

Mr. Sullivan noted that he was from the private sector and appreciated the opportunity to be considered for this position.

Mrs. Turner knew that Mr. Sullivan has been involved in a lot of contract negotiations. She asked him what kind of advise would he have in entering contract negotiations.

Mr. Sullivan said that they need to be comfortable with the agreement and know what could happen.

Mrs. Turner then asked him to comment on strategic planning.

Mr. Sullivan explained that he has been most directly involved as the CEO in a stand-alone business. His definition of strategy is the actions you take as to where you want to go.

Mayor Kramer knew that Mr. Sullivan's background was in private business. He asked how is it going to be different from going from a CEO in private business to a City Manager.

Mr. Sullivan commented that there is bureaucracy in the private business world. There are some of the same problems. Some of the problems that he sees with this City are with transparency and personnel issues. From his perspective, he sees a lot of the same issues. However, the Sunshine Law is new to him. It will add complexity and time to the process.

Mr. Heady told Mr. Sullivan that he was impressed with his background. He went back and reviewed the interview process when he talked to Mr. Sullivan through Skype and his background as a private sector has his attention and Mr. Sullivan has peaked his attention. It is important here what you do know and what you don't know. The biggest thing that impresses him is his private sector. During the interview when he talked to Mr. Sullivan he asked him if he did a lot of traveling and the reason for that is in the Airports now have the full body scan and he has been in the private sector and as a City Manager he will go through a full body scan and the public and press will scrutinize him, but he (Mr. Heady) is satisfied with his answers.

Mrs. Carroll told Mr. Sullivan that as the City Manager he will be the face of the City. She said not only out in the community, but also with the press. She asked Mr. Sullivan how is he up to meeting that need.

Mr. Sullivan felt that the only difference between the private and government sector is that things will get published in the newspaper.

Mrs. Carroll asked him how he will be the face to their community for the City of Vero Beach.

Mr. Sullivan brought up the utility issue and how complex it is. He said there are only a handful of people that truly understand it. He suggested getting everyone on board about what they are doing and keeping it simple.

Mrs. Carroll commented that very shortly they will be entering the budget process and they are expecting as a City to have decrease funding from the County because of decreases in their property taxes. She asked as a general rule, would Mr. Sullivan cut employees or services.

Mr. Sullivan said it would not be either/or, but probably both. He said that the answer lies in the whole strategy of the business. The services that they provide would have to be looked at and they would need to decide what is the most important services that they need to continue providing. He said that not everyone is going to be happy. They will need to come up with a good strategy and stand behind it.

Mr. Sullivan told Council that as they go through the process, the most important decision is that they have to pick the best leader and that is what he would be deciding on if he was sitting in their seats.

Mr. Dick Winger asked Mr. Sullivan what is the most difficult problem that he has faced in business.

Mr. Sullivan stated laying off good people. It is management's failure if that happens. He always tries not to have to do that.

Mr. J. Rock Tonkel asked him what he would be looking for in terms of a commitment to the City and personnel goals as to your next career moves. One thing that you will face is the fact that this City Council will change so the people that hire you may be different a year from now. How would you deal with that facet and relate to how you look at your next commitment here in Vero Beach.

Mr. Sullivan has asked himself is there a longevity to this job. He does not want to job hop. He referred to former City Manager, John Little, and how many years that he served this community as the City Manager.

At 11:23 a.m., Council took a five-minute break.

Mr. Ken Daige asked Mr. Sullivan if he gets the job how long would it take him to get up to speed on all of the issues that this City is facing.

Mr. Sullivan did not know the answer to that question. He realizes that there are some extremely complex issues coming up.

Mr. Glenn Heran liked the fact that Mr. Sullivan was from the private sector and had a strong background in finances. He said that he is a big believer in smaller government.

Mr. Sullivan went back to the strategy question that was asked earlier. He quoted “Not be in anything that you are not the best in.” He said that if efficiency drives “small” then he is for that. He said that no job is entitlement.

The next candidate was Mr. Steven Crowell, former City Manager of North Port, Florida, where the population is approximately 57,000 people. He served the City of North Port for five years and then rescinded from his position as City Manager because he applied for another job. Prior to that he was the City Manager in a town in Colorado for eleven years (resume on file in the Clerk’s office).

Mr. Fletcher brought up the restructuring of the entire City of Vero Beach and Mr. Crowell made some very strong comments that shuffling people around is one thing, but restructuring is different. He felt that this was one of the strong points that Mr. Crowell has. He said that one of the problems they have here is that the social structure inside the City of Vero Beach has been here so long and it needs some radical changes.

Mr. Crowell felt very strong about getting the right people in the right places to be doing the right things.

Mrs. Turner noted that Mr. Crowell has a Masters degree in Public Administration. She asked him to go over his credentials as a City Manager.

Mr. Crowell is a member of the International City/County Management and the Florida City/County Management Association where he adheres to a Code of Ethics and agrees to certain training and development.

Mrs. Turner recognized that Mr. Crowell was the recipient of the International City/County Management Association Credentialed Manager. She noted that in Mr. Crowell’s resume it states that he improved financial operations of the City including implementing a zero based budget approach resulting in on-going budget savings. She asked Mr. Crowell to touch on that.

Mr. Crowell stated that one of things that he likes to do is talk about what the outcome is that they want to accomplish. The zero base budget every year identified different departments and justified everything in that particular department.

Mayor Kramer noted that Mr. Crowell has worked for several different cities. He asked him what would be the first thing that he would do in coming to Vero Beach and getting acclimated.

Mr. Crowell said that what he does is get all the data that he can. He has conversations with staff. Takes time to go out and meet people and businesses, as well as meeting with the employees. He would have discussions with Council to find out what expectations

that they have in him being the City Manager and he would talk to staff about what their expectations are.

Mr. Heady noted that some of his constituents here in the community have told him that we need to start running this government as a business and he disagrees. He asked Mr. Crowell how did he feel about this.

Mr. Crowell recalled watching the joint City/County Special Call meeting and heard the comments that Mr. Heady made. He said that running the City like a business and running it effectively and efficiently is important. He said those are some of the things that he has done in government.

Mrs. Carroll referred to Mr. Crowell's resume where he noted that he improved the overall economic development function of the City, including the implementation of a City "branding" initiative, restructured the Economic Development division of the City to more align with City goals, thus better situating the City for expanding and attracting new businesses. She asked him to speak about that.

Mr. Crowell explained that in North Port the City Council approved having a consultant come in and do a lot of surveying of customers and citizens to find out what the City was, good and bad. He then handed out some paperwork on economic development (on file in the Clerk's office). He said that the community was brought together and told that this was what they were going to focus on.

Mrs. Carroll told Mr. Crowell that as the City Manager he will be the face of the City. She said not only out in the community, but also with the press. She asked Mr. Crowell to comment on that.

Mr. Crowell said that as City Manager that is his job. He will get out into the community and introduce himself. It is important for the City Manager to understand the Council, as well as the community's values and points of interest. He said there are going to be times when staff may not agree with their decision.

Mrs. Carroll mentioned that budget decisions were coming up shortly and if the necessity came to cutting employees versus services and asked what is his thought process on that.

Mr. Crowell expressed that employees are very important. He has made cuts and will do it again. He would try to put employees in different operation places and give them as much advance notice as possible and resources to find them a job. He understands that cities are in the business to provide services. He would look at efficiency and operation first and also being effective.

Mr. Ken Daise asked Mr. Crowell how long did he think it would take him to get up to speed on some of the issues here.

Mr. Crowell stated that he has already looked at a lot of the information and has a pretty good feel for the public piece of it. He expressed the importance of getting good and accurate information that you trust. He doesn't know what the time frame would be, but he has already started.

Mr. J. Rock Tonkel asked Mr. Crowell about his value system. He said because of challenges and the community's perception efficiency of its operations requires someone with strength and toughness. He asked are you that person.

Mr. Crowell commented that he has had to make some tough decisions in different cities. He noted that Vero Beach has an excellent value system about quality of life and part of his resume focuses on quality of life and values of the community.

Mr. Coment asked him if he is hired would his residence be in the City of Vero Beach.

Mr. Crowell answered yes. He said one of the attractions early on in Vero Beach for him was that there is a diversity in housing. He feels good about Vero Beach. He would need to have a candid conversation with each Councilmember about their expectations of him and where the City Manager will fit in.

Mr. Jim O'Connor, currently the City Manager in Winchester, Virginia, with a population of 27,000 people briefly went over his background (on file in the City Clerk's office).

Mr. Fletcher noted that Mr. O'Connor has a strong background in electric production.

Mr. O'Connor went over a situation in one of the cities that he was the City Manager where negotiations of utilities took place. His association with FMPA and FMPUA should not have any influence on his position as serving as their City Manager. If he is given the opportunity he will bring the best contract and proposal (referring to the utilities) that he can possibly negotiate.

Mrs. Turner pointed out Mr. O'Connor's credentials and the professional associations that he belongs to and has for quite a while.

Mayor Kramer asked Mr. O'Connor how he would familiarize himself with the water issues that they have.

Mr. O'Connor said that his experience in Winchester, Virginia is that now he works with a Utilities Service Authority. The Authority has representation from both the City and the County. The only employee is the Executive Director.

Mr. Heady asked him what was the outcome of the electric utility that he mentioned earlier.

Mr. O'Connor said the outcome was positive. They were able to negotiate a contract with some of their larger customers and it has drove the rates down. The biggest issue was purchasing fuel.

Mr. Heady commented that he has had debates with people concerning running the City like a business and he always responds that the City needs to be run as a government. He asked Mr. O'Connor for his comments on this.

Mr. O'Connor mentioned that there are principles that you can apply and he referred to customer service.

Mrs. Carroll asked Mr. O'Connor what did he mean when he referred to customer service/customer satisfaction in municipal government.

Mr. O'Connor explained that you have to always measure customer service/satisfaction to make sure that they are delivering the right services. He suggested doing a customer service survey.

Mrs. Carroll said he wanted to create a tool to go out to staff, residents, etc. Mr. O'Connor said the survey would go out to both residents and staff.

Mrs. Carroll mentioned that she has received comments from the community that because Mr. O'Connor was once President of FMPA and on the Board of the Municipal Power Agency that he might not have a positive attitude towards negotiations with FPL.

Mr. O'Connor did not agree. He said that this is a business decision and he expressed the need to negotiate the terms and conditions of the contract. The decision about what they do with their utilities is a local decision that is done by a Policy Board. It is important that he does have an understanding of those organizations.

Mrs. Carroll told Mr. O'Connor that as the City Manager, he will be the face of the City. She said not only out in the community, but also with the press. She asked Mr. O'Connor how is he up to meeting that need.

Mr. O'Connor explained that one of ways he does that now is with the involvement in different civic clubs and non-profit organizations. He encourages these organizations to invite him as a speaker. He said going to City Council meetings and into the office is just a small role for him.

Mrs. Carroll asked with budget cuts among them, where would he cut 10% of the budget if needed. Would it be services or employees?

Mr. O'Connor said that it would be a combination of both. He said that most of the budget is employee driven and that is where the real cost is. What will be needed to be done is to align the organization as to what you expect the outcome to be. This would mean restructuring the organization to make sure they know where they are going.

Mrs. Carroll referred to economic development for a city. She asked Mr. O'Connor to tell them what his feelings were concerning economic development, the Chamber of Commerce bringing in new businesses, etc.

Mr. O'Connor felt that this was critical and part of the life blood. He expressed how important it is to try to make sure that there is occupancy in the different buildings, which means having both commercial and retail space occupied.

Mrs. Turner asked in these economic times how would he motivate his employees.

Mr. O'Connor expressed that he has never worked with an organization that did not have employee evaluations. He would make sure that was instituted quickly. He recalled some budget cuts that they had to make in Winchester and one of the important things was being upfront with the organization and letting the employees know what is going on. He is a firm believer that the City organizations are not reflective of the way they were five years ago.

Mrs. Turner asked Mr. O'Connor what appeals to him about Vero Beach.

Mr. O'Connor recalled that when he left Bartow, Florida as City Manager and came to Winchester, Virginia the reason that he wanted to go there was because of the utilities and it is the Capital city. In Vero Beach the \$100 million dollars offered to purchase FPL is very attractive and taking an inward look at what they do as a City organization is one of those motivating factors. He said that serving Vero Beach would be a good opportunity for him because of his background experience.

Mr. J. Rock Tonkel told Mr. O'Connor that one of the compelling issues is that the lifecycle of a City Manager is short and an upward career direction is desirable. He said that Mr. O'Connor has only been in Winchester since January 2010. He asked why would he want to make a career move at this stage in his life.

Mr. O'Connor said that originally he had no plans to leave Virginia for at least five years until this opening came up. He feels that Vero Beach is a fine fit for his career path.

Mr. Ken Daige asked Mr. O'Connor if he is selected how long would it take him to come up to speed on the different issues.

Mr. O'Connor felt that he could get up to speed quickly. He has a copy of the LOI. The path they should be taking soon is to come to an agreement on the LOI and move forward from there. The utility issue probably will have to be on a referendum for the November election.

Mr. Coment asked Mr. O'Connor if he was selected would he live within the City limits.

Mr. O'Connor answered yes.

Mr. Johnson reminded Council that they have met three of the four finalist for City Manager. On Friday they will interview their fourth candidate, Mr. Ken Griffin, and he will be at City Hall around 10:00 in the morning which will give Council the opportunity to talk to him one on one before the Special Call meeting is held at 3:00 p.m. on Friday.

Mr. Fletcher complimented Mr. Johnson in bringing them such well qualified applicants.

Council took a lunch break and reconvened the meeting at 2:00 p.m.

7. CITY MANAGER'S MATTERS

A) Update on Finance Director Position

Mr. Falls reported that the selected applicant for the Finance Director turned down the offer due to a resignation in the City where he is employed. Of the five applicants short-listed, one withdrew before the final interviews and now one has turned down the offer. With the selection of a permanent City Manager scheduled for Friday, he will defer action until then.

Mrs. Turner wanted to continue moving forward on this.

Mrs. Carroll appreciated Mr. Fall's position on this and felt that they should follow his recommendations.

B) FPL Letter of Intent

Mr. Falls reported that he was not in any way trying to delay this process as it was represented by members of the public. He was trying to take responsible actions that Council directed. He reported to Council at yesterday's meeting that on April 27, 2011 he sent them a memorandum regarding action on the FPL Letter of Intent (LOI). He then read his memorandum to Council dated May 3, 2011 (please see attached).

Mrs. Amy Brunjes, FPL External Affairs Manager, was in agreement with what Mr. Falls just stated.

Mrs. Carroll reported that yesterday she attended a meeting with two representatives from FPL, Mr. Coment, and Mr. Falls. She said FPL asked that the modified LOI be removed from today's agenda because they felt that many of the items within the document were items that should be contract negotiation items as opposed to the LOI. She said that she found out this morning that GAI added line items and Gray Robinson added line items to the document, which included things such as environmental liability, details about the Power Plant lease and information about a partial sale. She was told by FPL that a partial sale was never on the table and of no interest to them at all. At this point FPL wants to simplify the LOI from the original one they received, as well as add some of the concerns of GAI, Gray Robinson, and of the City Attorney. She said that FPL said that they would

try to get back to the City by Friday or it would be up to Council whether to wait until Friday to go forward with a modified document or approve the original LOI. She noted that the LOI was simply a starting point to get them to the table.

Mr. Heady said one of the things that he was concerned about was that Council did not approve the LOI yesterday, and he understands the concerns of the other Councilmembers. He felt that the concerns could be alleviated if they added one sentence to the LOI, which was "The City reserves its right to raise any issues with respect to the utility" ahead of the Mayor's signature. He felt that the LOI already states this, that neither party is bound to proceed with the potential transaction unless and until mutually acceptable. He felt it was pretty clear that the agreement, in the final analysis, needs to be mutually acceptable in all of the terms. He felt that the draft that was presented to Council yesterday that has the Consultant's remarks and that the City Attorney reviewed it, were fine negotiating points and Council can certainly negotiate any of those points. He felt that the LOI was clear that they can negotiate any of those points. He felt that Council needed to indicate to FPL their willingness and their intent to go forward with meaningful discussions and meaningful negotiations. He thought that they could do that if they have three votes to approve the LOI as it is. If they want to add one sentence that states that they can negotiate any issue with respect to the electric utility. Then they could sign it and see what they could do to move in a positive way to find out whether or not FPL and the City is really going to come to terms on this.

Mr. Heady made a motion to approve the LOI with possibly that one modification. Mrs. Carroll seconded the motion.

Mrs. Turner asked Mr. Falls if he did not receive any correspondence from their Consultants regarding this LOI until Monday.

Mr. Falls said that they received emails of drafts and were working on getting those comments together. He thought that the last email Mr. Coment received was after 5:30 p.m. Friday. He and Mr. Coment took the information home and reviewed it over the weekend. The document he received yesterday was at about 11:45 a.m.

Mrs. Turner said the City received the LOI from FPL on April 4th. She asked is there a reason why it took such a long time to respond to it. She asked was it GAI or Gray Robinson's inability to respond to the City's request in a timely manner.

Mrs. Carroll said that she received copies of some of the emails that went back and forth between Mr. Coment and GAI Consultants. She reported that the emails with GAI took place April 21st and from Gray Robinson on April 27th and May 2nd.

Mr. Coment said that his exposure to this began in March with FPL regarding the City's Charter. He said that he received an email of the word document of the LOI from FPL on April 14th. He reported that he responded to the email on April 15th. He met with GAI telephonically on April 19th and agreed that he would send them the document with his comments. He said that they have been emailing back and forth since the 19th of April.

Mrs. Turner was appalled at seeing the revised LOI. She said that this was a response to almost a hostile takeover as opposed to a response to a company that the City invited to come and make a proposal. She said this is incredibly defensive. She noted that this was not an approved document by the Council.

Mr. Coment said that usually the City Council does not see these things until they have been fully negotiated and they have a final document. He said that this goes on daily where staff constantly is going back and forth with other entities to narrow it down to one proposal.

Mr. Heady asked would the City Attorney agree that if they added one sentence at the end of the LOI, "The City of Vero Beach reserves the right to accept, reject, or negotiate any of the terms included or excluded in this Letter of Intent." He asked would it be acceptable to FPL. All he is saying is that in the City's acceptance of the LOI that they would agree to negotiate any of the terms involved in the electric utility. That they all would be happy at the end of the day.

Mrs. Brunjes clarified that Mr. Heady was not asking to negotiate terms in the LOI after it is signed, that he was just awarding the LOI.

Mr. Heady said they were awarding the LOI in saying that the terms of the final contract are to be negotiated.

Mrs. Brunjes said that was fine with FPL. She explained that their intention of the LOI was to be an opening point of negotiations and to give the frame work about what they are thinking as far as a number and how they arrived at that number. She said that they totally understood and respected Council's vote yesterday when they were told there were revisions to the LOI from the City's legal staff. However, when they saw what was being referred to it was their feeling that many of those items were to be negotiated, including the item regarding a partial sale. She said that FPL was originally approached to purchase the entire system and that is what they have been preparing for. She said that everything in the document is negotiable, but not something that they would want to see in the LOI. She agreed with what Mr. Heady said.

Mr. Heady amended his motion to include that sentence "The City of Vero Beach reserves the right to accept, reject, or negotiate any of the terms included or excluded in this Letter of Intent.". Mrs. Carroll seconded the amended motion.

Mr. Fletcher said that his reaction yesterday was that the document had been designed to exclude some negotiations. He understood now that everything is on the table for discussion, that there is no intent to exclude any items for discussion. He asked is that correct.

Mrs. Brunjes answered not on FPL's part.

Mr. Fletcher said that he looks at them as sharks and he does not want to be bait in the water. He would be negotiating at arm's length, just as he expects FPL to do.

Mrs. Brunjes said that they want to work with the City and make sure that the City has comfort level every step of the way.

Mr. Fletcher said with that understanding, he would change his vote from yesterday from no to yes.

Mayor Kramer said there is a transparency issue and asked if they sign the LOI, would they be essentially shutting the doors on the public.

Mr. Brunjes answered no. She said they plan to be as transparent as possible throughout the process. One thing they need to determine next would be what the plan is to begin negotiations. Any of the things agreed upon that comes before the Council is always open to the public. She said that they plan on talking about having someone from the City Council participate in the negotiations so everything is open once it has been decided.

Mayor Kramer said the City has attorneys who are looking at this and are looking out for the best interest of the people. He said that he was looking out for the best interest for the people. He asked Mr. Coment for his opinion.

Mr. Coment said the LOI did not address the City's due diligence or the City's conditions. He said the LOI was written from the perspective of FPL. He said FPL agreed that they could remove the limitation on the monetary amount. Those limiting things are what they are interested in removing so there is no question.

Mayor Kramer asked Mr. Coment if they could have this completed by Friday.

Mr. Coment said they are waiting for FPL to send them something back. He felt that FPL understood his position and the consultant's position.

Mrs. Carroll said that Mrs. Brunjes told her that she was okay with whichever way the Council chooses to go.

Mrs. Brunjes said that FPL would agree today to take out the price if that makes them more comfortable. She said the consultant wanted a minimum price and they could not do that. She said they were comfortable stating that it would be mutually agreed upon.

Mr. Heady amended his motion to include Mrs. Brunjes modification to eliminate the restriction on the dollar amount, that it would state a mutually agreed upon price. Mrs. Carroll seconded the amended motion.

Mayor Kramer asked Mr. Coment is there any other limiting factors in the LOI that he sees are objectionable.

Mr. Coment said the consultant noted that the LOI only addresses the sale of assets and not on an ongoing utility business.

Mrs. Brunjes said this is a LOI and something such as that could be negotiated.

Mr. Fletcher said those were items that would come up under negotiations. He said the LOI does not preclude them.

Mrs. Brunjes said no.

Mr. Coment said that they made these changes on the abundance of caution to clarify that everything is on the table with no limitations.

Mrs. Carroll said her concern in reading all the changes by GAI and by Gray Robinson was that they were actually limiting it and making a more concise document with very strict stipulations. She asked did the idea of a partial sale come from the consultants or from discussions between Mr. Coment, the Mayor, etc.

Mr. Coment did not remember any discussions with them regarding a partial sale.

Mrs. Carroll asked then how did that information get into the document.

Mr. Heady said there have been discussions about a partial sale for a long time. He said that he has had those discussions openly and publically. They have had input from members of the public who are knowledgeable in this area that with respect to FMPA that in order to actually affect a sale they might have to keep a portion in order to accept the entitlements. He said that these were all negotiating points. He did not think that the idea of a partial sale was anything new. He has been talking about it since he has been on this Council.

Mrs. Carroll asked Mrs. Brunjes has anyone from the City or the City Council ever spoken to FPL about a partial sale before yesterday.

Mr. Heady said that he has.

Mrs. Brunjes said it may have come up in the early discussions. She said that the Mayor might have mentioned it.

Mrs. Turner called the question.

Mayor Kramer asked Mr. Coment if he is okay with this.

Mr. Coment said the LOI discussed FPL's due diligence, but did not provide the City to have a due diligence period. Also, FPL has conditions preceding and the City does not other than City Council approval.

Mrs. Brunjes asked Mr. Coment to specify his statement regarding the City not being able to do due diligence. She said that they expect the City to do their due diligence throughout the entire negotiation process.

Mr. Heady said the sentence he is suggesting states that the City reserves the right to accept, reject, negotiate any of the terms included or excluded.

Mr. Coment said that helps.

Mr. Heady said there were three things, which were excluding the restriction on the price, that FPL and the City does due diligence and the additional sentence.

Mrs. Carroll called the question.

Mr. Heady read the sentence to be added to the LOI, "The City of Vero Beach reserves the right to accept, reject, or negotiate any of the terms included or excluded in the Letter of Intent." They are also going to eliminate where they restrict the dollar amount to a maximum of \$100 million dollars and add "and the City" to the section under due diligence (located on page four of the LOI).

The motion passed unanimously.

Dr. Faherty commented that they have gone through this and what has to be remembered is the date that the discussion started, which he thought was the 17th or 19th. He said that they need to remember that May 2nd was delayed because Mr. Heady was not present. He felt that there was an issue of timeliness and urgency in moving through this process. He felt that must be primary. He also felt that there needs to be a point person to oversee what is done and what has to be done, target dates, etc.

Mr. Fletcher said that is up to the City Council and they would set up who was going to be the point person.

Mrs. Brunjes asked based on what Council approved, would they like FPL to make the changes to the document and send it back to the City. She said that they would need to get the exact motion and hope to get it to Council by their Friday meeting.

Mr. Coment said that Dr. Faherty and Mr. Wilson have no clue what is on their plate (staff). They are here to do whatever this Council wants done. He said that he took an oath to represent his client to the best of his ability and that is what he will do. He said that there is a lot on their plate, not just their FPL agenda.

Mr. Heady did not think it was their (Mr. Wilson and Dr. Faherty) FPL agenda. He felt that the vast majority of the public and of this Council has resolving the electric concerns as something that is on their plate and he would applaud and thank the members of the public, including Mr. Daise, Dr. Faherty, Mr. Wilson, Mr. Heran, etc., all of the members

of the public that bring issues to this Council's attention. He did not think that anyone said that he (Mr. Coment) was sitting around doing nothing. He did not think that was accurate at all.

Mr. Coment said there are always the imprints that staff is holding things up and it is not true. He said they can express their opinions and staff takes it meeting after meeting and it is getting old. They need to realize that there is a lot of work to be done besides this one issue.

Mr. Heady said there was a document in his hand that states that he (Mr. Coment) had something from the consultants on April 28th. Mr. Heady said that he asked at the beginning of yesterday's meeting if there were any other documents, anything at all, that this Council should be aware of and he was told no. This should have been disclosed at that point. He asked specifically whether or not there was anything else and Mr. Coment did not disclose that. He found that very troubling.

Mr. Daige knows that everyone is doing the best they can and they hear many comments from the public. They have people who want this rushed through, they have people who want Council to do due diligence on behalf of the City and that staff is doing their very best to serve Council. He thanked Council for looking at the LOI and tweaking it to protect the City. He looked forward to hearing more comments in the future and looked forward to the team that would do the negotiating. He felt that Mr. Heady made it clear that if it is not working out that the City has the option to pull out. That is what a lot of them are looking for. He felt that Council has done the best that they could.

8. CITY ATTORNEY'S MATTERS

A) Status Change – Assistant City Attorney

Mr. Coment reported that Assistant City Attorney, Peggy Lyon's employment status has been as "permanent part-time" since returning to work for the City in October of 2000. The currently reduced legal staff has been handling the City's regular day to day legal work as well as dealing with the increased Council meetings and legal work and the major issues facing the City such as the potential electric utility and water and sewer utility transactions. So it is important to address the part time limitations on Mrs. Lyon's services before the summer school break begins. Mrs. Lyon has advised him that she is willing and able to return to work full time as of mid-June. He is requesting that the Council approve a change in status for Mrs. Lyon's employment from permanent part time to full time.

The whole Council agreed with changing Mrs. Lyon's status.

Mr. Heady commented that he has the upmost respect for Mrs. Lyon and is in favor of moving her into a full time position. He understands that there may be commitments that she had to do in order for this to happen. The only addition to adding her on full time is that that this City Council understands that because of her summer schedule that she is

allowed to do some of her research on her computer at home and not necessarily in her office. Some of the work that she might do on some occasions might be outside this office.

Mr. Coment agreed to working with Mrs. Lyon's schedule.

Mrs. Carroll noted that one of her concerns was that as this Council has made the determination that they are moving forward with looking at regionalization of water and sewer and that will involve a large percentage of the attorney's time and now they are also negotiating with FPL, which will also take a lot of time. Her concern is that they do not have the staff in the City Attorney's office to work on both of these transactions. It may be a point that this Council chooses to negotiate for a transactional attorney who would serve the City in these two negotiations. She knows at the moment they have a contract with Gray Robinson as a part of the GAI contract that they approved. But, she is concerned that they may have to bring someone in for this because Mr. Cloud does not live locally.

Mr. Coment said that Mr. Cloud does not live here and meets out of the Orlando office. He felt that Mr. Cloud was capable of handling this kind of transaction.

Mrs. Carroll was not a hundred percent convinced that Mr. Cloud would be the best person for them to use as a transactional attorney because from what she has read he is more of a municipal/utility attorney. Mr. Coment said that was correct. Mrs. Carroll continued by saying that she has been told by residents of the community that a transactional attorney is who they may need to handle these utility matters. It may behoove them as a Council to look at bringing someone in as a consultant to work on both of these issues. She said that Mr. Coment probably would not have the time.

Mr. Coment commented that they do the best that they can.

Mrs. Turner agreed that if they were going to be working with both the electrical issue and the water and sewer issue concurrently then it will be unrealistic for Mr. Cloud to address both of these issues at the same time. She concurred with Mrs. Carroll that they look at additional outside help.

Mayor Kramer suggested bringing this up at their next meeting. He wanted to see some backup material as to why.

B) Dodgertown land swap – closing documents

Mr. Coment referred to the documents that they have received in their backup material and also the new documents that he presented them with today. He said that the documents were approved 5-0 before the County Commission at their meeting this morning.

Mrs. Turner referred to the first page of the amendment to the property exchange agreement. She assumed that this property was being held by DT Commons.

Mr. Coment explained that their surveyor has researched this and does not believe that there is an issue with the easements. In the abundance of caution their title insurance company did not want to insure those easements. He also pointed out that the City is not buying title insurance on the property that they are receiving. They know from the beginning of time who has owned the land so they can save some money and not spend it on title insurance. He reported that the parcel that the County is getting at one time the Dodgers had used part of it as a dump and that is one reason they (the County) had some concerns so they had an environmental audit done, which showed there were no problems.

Mr. Fletcher made a motion to accept the Dodgertown land swap documents. Mrs. Carroll seconded the motion and it passed unanimously.

9. CITY COUNCIL MATTERS

A. Old Business

- 1. FPL Report – Requested by Councilmember Heady**
- 2. OUC Contract – Requested by Councilmember Heady**
- 3. Water Sewer Update – Requested by Councilmember Heady**
- 4. Continuation of discussion, consideration of Charter Officer positions – Requested by Mr. Heady**

Mr. Heady's items will be heard at the next Council meeting.

B. New Business

- 1. GAI Electrical Consulting Contract – Requested by Vice Mayor Turner**

Mrs. Turner requested that the City Manager provide copies of the GAI Electrical Consulting contract invoices to Council and a monthly review of their progress at a City Council meeting. Presentation to be made by staff not by Consultants at their hourly rates.

Mr. Falls said that he would provide Council with an update each month.

Mrs. Carroll also wanted to see the amounts broken out, such as GAI, Mr. Robinson's expenses, etc.

Mr. Falls stated that when he receives the level of detail with their invoices he can break these out.

- 2. Consideration of FPL offer – Requested by Councilmember Heady**

3. **Request for staff presentations on any errors in any electric utility presentation to City Council by any individual or group – Requested by Councilmember Heady**
4. **Discussion on City Manager position – Requested by Councilmember Heady**

Mr. Heady requested that these items be discussed at the next Council meeting.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Jay Kramer's Matters

1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mayor Kramer reported that he attended the 75th Anniversary of the Vero Beach Art Club, the Arbor Day ceremony, At a Day of Service he read a proclamation, he attended the Children's Art Festival and he took a tour of St. Francis Manor with Mr. Frank Zorc.

Mayor Kramer announced that they will cancel the workshop scheduled for 4:00 this afternoon. He just wanted to have some "frank" conversations with Council on some issues.

Mrs. Turner asked the Clerk to notify Council if a workshop or Special Call meeting has been set and also expressed the need to have backup with any meeting that is held.

B. Vice Mayor Pilar Turner's Matters

1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mrs. Turner commented on the fundraiser going on at the Ocean Grill and where the proceeds will go. She also wished all the Mothers a beautiful Sunday (Mother's Day).

C. Councilmember Tracy Carroll's Matters

1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mrs. Carroll reported that she attended the Arbor Day celebration, the showing of COBB at the Riverside Theater, and mentioned that the comedy show would be returning this weekend at Riverside Theater.

D. Councilmember Brian Heady's Matters

1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mr. Heady mentioned the privilege that he had in touring the city villages of Haiti. He said one of the things about being in Haiti is that you come back to this City and appreciate how good a job their Public Work's Department and other departments in the City do. One of the questions that seems to keep coming up is if the Haitian people are benefiting from the money that has been flowing into Haiti. He said that the government doesn't do a good job of delivering essential services and he said that doesn't just stem from the damages that have occurred because of the Earthquakes. There are problems that have been in the city for a long time. The Haitians that he dealt with were very warm and wonderful people.

1. Any item or items removed from meeting agenda.

E. Councilmember Craig Fletcher's Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comments**

Mr. Fletcher had no items to report on.

11. ADJOURNMENT

Mr. Fletcher made a motion to adjourn today's meeting at 3:03 p.m. Mr. Heady seconded the motion and it passed unanimously.

/tv

**CITY COUNCIL WORKSHOP MEETING
TUESDAY, MAY 3, 2011 4:00 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

A G E N D A

- 1) Council to discuss issues concerning the City of Vero Beach – Requested by Mayor Kramer**
- 2) Adjournment**

Council meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

7-B)



Office of City Attorney

MEMORANDUM

To: Mayor Kramer, Vice-Mayor Turner, and City Councilmembers
From: Wayne Coment, Acting City Attorney *wrc*
Subject: Dodgertown land swap — closing documents
Date: April 27, 2011

Attached for your review and approval are various closing documents concerning the Dodgertown land swap with Indian River County. Included are the following:

1. First Amendment to Property Exchange Agreement
2. County Deed and Sellers Affidavit of No Liens
3. City Deed and Sellers Affidavit of No Liens
4. First Amendment to Declaration of Covenants, Conditions, and Restrictions
5. Termination of Parking Lease Agreement
6. Parking License Agreement
7. Parking Estoppel Certificate from City
8. First Amendment to Interlocal Agreement

The following documents are included for information and do not require approval of the City Council as the Exchange Agreement was previously approved and the other documents involve Indian River County and MiLB only:

9. Property Exchange Agreement dated February 1, 2011
10. First Amendment to Facility Lease Agreement (IRC with MiLB)
11. Consent and Waiver of MiLB Vero Beach, LLC to various agreement (to IRC)
12. IRC Resolution giving prior consent to use of Cloverleaf property

In addition to all the foregoing, we anticipate there will be a few future easements to be completed that do not affect the closing of the transaction at this time.

Please let us know if we may provide any additional information for your review. Thank you for your consideration in this matter.

1

FIRST AMENDMENT TO PROPERTY EXCHANGE AGREEMENT

THIS FIRST AMENDMENT to that certain Property Exchange Agreement, dated as of February 1, 2011, is made and entered into as of the _____ day of _____, 2011 by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, 1801 27th Street, Vero Beach, Florida 32960 (“County”) and the CITY OF VERO BEACH, a municipality of the State of Florida, 1053 20th Place, Vero Beach, Florida 32960 (“City”) as follows:

WHEREAS, as of February 1, 2011, the County and the City entered into that certain Property Exchange Agreement in which they agreed to exchange the Cloverleaf Property for the Parking Property, (“Exchange Agreement”); and

WHEREAS, the parties desire to amend the Exchange Agreement, as set forth herein;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals.** The above recitations are true and correct and are incorporated herein.
2. **Conveyance of Easements by the City.** Paragraph 8 of the Exchange Agreement is amended to read as follows (new language underlined):

The City shall convey to the County (a) an easement for drainage of stormwater from 43rd Avenue in its future expanded condition across the remaining City Property to the existing retention pond, (b) an easement for access and maintenance to the pump house, pumps, and pipes at the southwest corner of the City Property to the existing retention pond, and (c) an easement to locate on the City Property adjoining the Cloverleaf Property up to 33.33% of the new retention pond to be constructed on the Cloverleaf Property (“New Retention Pond”), and thereafter to use the portion of the New Retention Pond located on the City Property (together with the portion located on the Cloverleaf Property) for drainage, irrigation, stormwater retention and maintenance purposes related to the Dodgertown property and the Cloverleaf Property. In addition, in the event that the County is denied physical access to Dodgertown through both of the easements which are believed to exist at the east and west ends of the DT Commons property, lying north of Holman Stadium and north of the hotel/conference center, then the City shall convey to the County an easement for ingress to and egress from Dodgertown over the City Property. The parties shall cooperate in good faith to locate the easement in a manner which provides reasonable access to Dodgertown but does not unreasonably interfere with the City’s use of the City Property. The easements described above shall be drafted in such a manner, or shall be modified at the appropriate time, to apply to the New Retention Pond, after such pond is constructed. To the extent that the easements described herein are not completed and executed at the time of closing, the requirement to execute and deliver such easements shall survive the closing.

3. **Remaining Provisions.** All remaining provisions of the Exchange Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the County and the City has caused these presents to be executed in their names, the day and year first above written.

Attest: Jeffrey K. Barton,
Clerk of Court

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Bob Solari, Chairman

BCC Approved: _____

Approved:

Approved as to form and legal sufficiency

By: _____
Joseph A. Baird
County Administrator

By: _____
Alan S. Polackwich, Sr.
County Attorney

Attest:

CITY OF VERO BEACH, FLORIDA

BY: _____
Tammy K. Vock
City Clerk

BY: _____
Jay Kramer, Mayor

Council Approved: _____

Approved as conforming to
municipal policy:

Approved as to form and legal sufficiency:

By: _____
Monte Falls
Interim City Manager

By: _____
Wayne Coment
Acting City Attorney

This document was prepared
by and should be returned to:
Indian River County Attorney's Office
1801 27th Street
Vero Beach, FL 32960

2

COUNTY DEED
INDIAN RIVER COUNTY, FLORIDA

THIS DEED, made this _____ day of _____, 2011, between **INDIAN RIVER COUNTY, FLORIDA, a political subdivision of the State of Florida**, whose address is 1801 27th Street, Vero Beach, Florida 32960 ("GRANTOR"), and **CITY OF VERO BEACH, a Florida municipal corporation**, whose address is 1053 20th Place, Vero Beach, FL 32960 ("GRANTEE"),

GRANTOR, for and in consideration of the sum of **Ten Dollars**, and other good and valuable consideration, to it in hand paid by GRANTEE, receipt of which is hereby acknowledged, has granted, bargained, and sold to GRANTEE, its heirs and assigns forever, the following described lands lying and being in Indian River County, Florida:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF
[PARKING PARCEL]

Said property shall be subject to that certain Declaration of Covenants, Conditions and Restrictions, recorded at OR Book 1961, Page 978, Public Records of Indian River County, Florida, as modified by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions executed and recorded by the parties concurrently with this Deed.

IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Chairman of said Board, the day and year set forth above.

INDIAN RIVER COUNTY, FLORIDA
By its Board of County Commissioners

Attest: J.K. Barton, Clerk

By _____
Deputy Clerk

(Official Seal)

By _____
Bob Solari, Chairman

BCC approved: _____

Approved as to form and
legal sufficiency:

Alan S. Polackwich, Sr.
County Attorney

ACCEPTANCE OF CONVEYANCE

The foregoing conveyance from Indian River County, Florida is hereby accepted by the City of Vero Beach, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

ATTEST:

CITY OF VERO BEACH

Tammy K. Vock
City Clerk

Jay Kramer
Mayor

[CITY SEAL]

Date: _____

Approved by CC: _____, 2011

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

Wayne R. Coment
Acting City Attorney

Monte K. Falls
Interim City Manager

EXHIBIT "A"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 2-A & 1-C

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 30.00 feet;

Thence South 89°45'39" East and parallel with the north line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3;

Thence continue South 89°45'39" East along said South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Record Book 1758, Page 523 of the Public Records of Indian River County, Florida), said point also being the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along said South right-of-way for a distance of 506.21 feet;

Thence South 3°32'27" West for a distance of 582.12 feet;

Thence South 00°14'21" West for a distance of 360.85 feet to a point on the South line of Dodgertown Parcel 2A;

Thence North 89°45'39" West along said South line of Parcel 2A for a distance of 437.69 feet to the Southwest corner of said Parcel 2A;

Thence North 00°14'21" East for a distance of 85.00 feet;

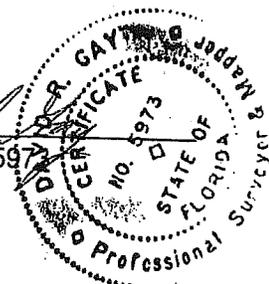
Thence North 89°45'39" West for a distance of 35.00 feet;

Thence North 00°14'21" East along the West line of said Parcel 2A for a distance of 857.00 feet to the Point of Beginning;

Said Parcel containing 452,042 square feet or 10.38 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973



PARCEL 19

PARCEL 20

SOUTH SECTION LINE 34-32-39
NORTH SECTION LINE 03-33-39

26TH STREET / WALKER AVENUE BLVD.

INDIAN RIVER CANAL
WATER CONTROL DISTRICT CANAL AS

S00°00'47"W
30.00'

S89°45'39"E
288.78'

S89°45'39"E
75.00'

POINT OF COMMENCEMENT
NW CORNER SECTION 03-33-39

SOUTH SECTION LINE 33-32-39
NORTH SECTION LINE 04-33-39

43RD AVENUE

32-39-26-00011-0230-00001.3
DODGERTOWN PARCEL 1-A
O.R. BK 1961, PG 966

CITY OF VERO BEACH

32-39-26-00011-0230-00001.2
DODGERTOWN PARCEL 2-A
O.R. BK 1758, PG 523

INDIAN RIVER COUNTY

COUNTY TO CITY
10.38 ACRES

N00°14'21"E
857.00'

EAST SECTION LINE 04-33-39
WEST SECTION LINE 03-33-39

32-39-26-00011-0230-00001.1
DODGERTOWN PARCEL 3-A
O.R. BK 1961, PG 968
CITY OF VERO BEACH

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH

DEPARTMENT OF PUBLIC WORKS

SURVEY DIVISION

SKETCH OF PROPERTY DESCRIPTION
10.38 ACRE PARCEL-DEED COUNTY TO CITY
PORTION OF SECTION 03-33-39

EXHIBIT "B"

CITY PROJECT NO.

2010-20

DATE
12/2010

DRWN BY
DG

CHKD BY
MKF

DESCRIPTION

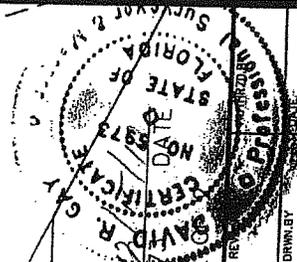
SCALE 1" = 200'

HOLMAN STADIUM

32-39-26-00011-0230-00001.0
DODGERTOWN PARCEL 1-C
O.R. BK 1426, PG 555

INDIAN RIVER COUNTY

SUBJECT PARCEL



DAVID GAY, PSM #559
SHEET 2 OF 2

TB Be Corrected 

SELLER'S AFFIDAVIT

State of Florida
County of Indian River

Before me, the undersigned authority, duly authorized to administer oaths, this day personally appeared William DeBaal, who, after first being duly sworn on oath, by me, deposes and says that:

1. Affiant is the Deputy County Attorney for Indian River County, a political subdivision of the State of Florida, and in said capacity, affiant can say that said Indian River County, a political subdivision of the State of Florida is the owner of the following described land, to wit:

2A

Portions of Dodgertown and Dodgertown Parcel ~~3-A~~, situated in the State of Florida, County of Indian River, City of Vero Beach, and being part of Section 3, Township 33 South, Range 39 East, and being more particularly described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East; thence South 00° 00' 47" West along the West line of said Section 3 for a distance of 30.00 feet; thence South 89° 45' 39" East and parallel with the North line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3; thence continue South 89° 45' 39" East along the South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Records Book 1758, at Page 523, of the Public Records of Indian River County, Florida), said point also being the Point of Beginning. Thence from the Point of Beginning continue South 89° 45' 39" East along said South right-of-way for a distance of 506.21 feet; thence South 03° 32' 37" West for a distance of 582.12 feet; thence run South 00° 14' 21" West for a distance of 360.85 feet to a point on the South line of Dodgertown Parcel 2A; thence North 89° 45' 39" West along said South line of Parcel 2A for a distance of 437.69 feet to the Southwest corner of said Parcel 2A; thence North 00° 14' 21" East for a distance of 85.00 feet; thence North 89° 45' 39" West for a distance of 35.00 feet; thence North 00° 14' 21" East along the West line of said Parcel 2A for a distance of 857.00 feet to the Point of Beginning.

2. And, that said land is free and clear of all liens, taxes, encumbrances and claims of every kind, nature and description whatsoever (including any Federal Internal Revenue Service or Florida Department of Revenue liens or warrants for unpaid taxes of any nature), except for any mortgage described in the deed of conveyance given simultaneous herewith naming The City of Vero Beach, a municipality of the State of Florida, as grantee therein; which mortgage the said grantee has agreed to assume; and except for ad valorem or other real property taxes for the calendar year in which this affidavit is dated; and restrictions, reservations, limitations, covenants, conditions and easements of record, if any; and

3. That there have been no improvements, alterations, or repairs to said land or any improvements situate thereon, within the most recent ninety (90) days for which the cost thereof has not been fully paid; and that there are no unpaid claims for labor or material furnished for repairing or improving same which remain unpaid; and

4. That any condominium or homeowner's association regular or special assessments, if any are applicable, currently due and owing, have been paid; and

5. That any personal property situate upon subject land that is being conveyed appurtenant to the land is free and clear

of all liens, encumbrances, claims and demands of all kinds whatsoever (including unpaid time payment contracts for the purchase or replacement of built-in appliances or fixtures, plumbing, air conditioners, radio or television antennas, carpeting, lawn sprinkling systems, swimming pools, window or door coverings, fences, or any other such furnishings, equipment or property); and

6. That **Indian River County, a political subdivision of the State of Florida** has complied in all respects with the Florida Sales and/or Intangible Personal Property Tax Laws with respect to any buildings or personal property situate upon said land, if applicable; and

7. That there are no parties in possession of the premises described herein as a tenant or possessory claimant of any kind or nature; and that there are no outstanding contracts for the sale of the lands described herein to any person or persons whomsoever; nor are there any unrecorded deeds, mortgages, or other conveyances affecting title to said land; and

8. That **Indian River County, a political subdivision of the State of Florida**, is organized under the laws of the United States of America (or a State or Territory thereof);

9. That all payable real property taxes have been paid relative to the land that is the subject of this affidavit; and that there are no unpaid (but payable) taxes for the current or prior tax years; and that affiant has received no notice of any pending assessment for municipal, county, or special taxing district improvement such as water, sewer, or road projects that would affect the lands described hereinabove, that have not been paid for, or otherwise specifically revealed to the purchaser, and accepted by said purchaser as a lien, liability for payment of which has been specifically agreed to by purchaser; and

10. That no proceedings in bankruptcy or receivership have been instituted by or against the said **Indian River County, a political subdivision of the State of Florida**; nor is there any pending litigation or dispute of any kind that might result in a judgment or other lien that would affect title to subject land; and

11. That affiant is familiar with the nature of an oath and with the penalties as provided by the laws of the State of Florida for falsely swearing to statements made in an instrument of this nature; and that this affidavit has been read by affiant, or read to affiant, and that its content is fully understood, and that all statements made herein are made as statements of fact; and that this affidavit is made for the specific purpose of inducing **The City of Vero Beach, a municipality of the State of Florida** to purchase said land from affiant; and further the undersigned, on behalf of **Indian River County, a political subdivision of the State of Florida** said agrees to pay on demand to the purchaser herein identified, or to said purchaser's successors and/or assigns; all amounts secured by any and all liens or encumbrances not revealed herein, together with all costs, loss and reasonable attorney's fees, including attorney's fees expended in enforcement of the provisions of this paragraph, that said party may incur in connection with any such unrevealed liens, provided said liens either currently apply to such property, or a part thereof, or are subsequently established against said property and are created by **Indian River County, a political subdivision of the State of Florida**, known by **Indian River County, a political subdivision of the State of Florida**, or have an inception date prior to the consummation of the transaction upon which this affidavit is given; and

Nothing Further!

(Wherever used herein, the term "affiant" shall include singular and plural, singular and collective; all references to the singular shall include the plural; and the present tense shall include the past; wherever the context so admits or requires.)

Seller:

**Indian River County, a political subdivision
of the State of Florida**

By: _____
William DeBaal, Deputy County Attorney

Sworn to and subscribed before me this ____ day of **April, 2011**, by William DeBaal; who was personally known to me or provided identification of sufficient character to establish identify with a reasonable degree of certainty.

Notary Public

Type of identification provided (Check One):

- Driver's License
- Passport
- Government (State or Federal) ID Card
- Resident Alien ID Card
- Other

3

**CITY DEED
VERO BEACH, FLORIDA**

THIS DEED, made this _____ day of _____, 2011, between the **CITY OF VERO BEACH, a Florida municipal corporation**, whose address is 1053 20th Place, Vero Beach, FL 32960 ("GRANTOR"), and **Indian River County, a political subdivision of the State of Florida**, whose address is 1801 27th Street, Vero Beach, FL 32960 ("GRANTEE"),

GRANTOR, for and in consideration of the sum of **Ten Dollars**, and other good and valuable consideration, to it in hand paid by GRANTEE, receipt of which is hereby acknowledged, has granted, bargained, and sold to GRANTEE, its heirs and assigns forever, the following described lands lying and being in Indian River County, Florida:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF
[CLOVERLEAF PARCEL]**

Said property shall be subject to that certain Declaration of Covenants, Conditions and Restrictions, recorded at OR Book 1961, Page 978, Public Records of Indian River County, Florida, as modified by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions executed and recorded by the parties concurrently with this Deed.

IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed in its name by its City Council, acting by the Mayor of said Council, the day and year set forth above.

Attest:

CITY OF VERO BEACH, FLORIDA
By its City Council

By _____
Tammy K. Vock
City Clerk

By _____
Jay Kramer, Mayor

Approved as to form and legal
sufficiency:

Approval date _____

City Attorney

ACCEPTANCE OF CONVEYANCE

The foregoing conveyance from the City of Vero Beach, Florida is hereby accepted by the Indian River County, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

INDIAN RIVER COUNTY, FLORIDA

By its Board of County Commissioners

Attest: J.K. Barton, Clerk

By _____
Deputy Clerk
(Official Seal)

By _____
Bob Solari, Chairman
BCC approved: _____

Approved as to form and
legal sufficiency:

Alan S. Polackwich, Sr.
County Attorney

EXHIBIT "A"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 3-A

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 887.01 feet;

Thence South 89°45'39" East for a distance of 50.00 feet to a point on the East right-of-way of 43rd Avenue said point also being the Northwest corner of Dodgertown Parcel 3A as described in Official Record Book 1961, Page 968 of the Public Records of Indian River County, Florida;

Thence South 89°45'39" East along the North line of said Parcel 3A for a distance of 345.39 feet;

Thence South 00°14'21" West for a distance of 85.00 to a point on the North line of said Parcel 3A;

Thence continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 437.69 feet to the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 468.25 feet to the Northeast corner of Parcel 3A;

Thence South 63°53'04" East for a distance of 326.67 feet to a point on the East line of Dodgertown Parcel 3A;

Thence South 18°15'41" East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A;

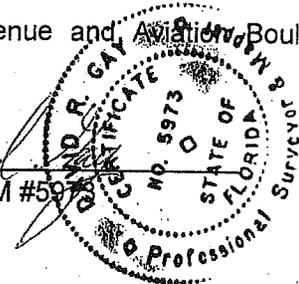
Thence South 69°22'53" West for a distance of 898.97 feet;

Thence North 02°50'58" West for a distance of 830.37 feet to the Point of Beginning;

Said Parcel containing 519,743 square feet or 11.93 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973



POINT OF COMMENCEMENT
NW CORNER SECTION 03-33-39

32-39-26-00011-0230-00001.3
DODGERTOWN PARCEL 1-A
O.R. BK 1961, PG 866

32-39-26-00011-0230-00001.2
DODGERTOWN PARCEL 2-A
O.R. BK 1786, PG 523

32-39-26-00011-0230-00001.0
DODGERTOWN PARCEL 1-C
O.R. BK 1426, PG 855

32-39-26-00011-0230-00001.1
DODGERTOWN PARCEL 3-A
O.R. BK 1961, PG 968

DODGERTOWN

PRACTICE FIELDS

SCALE 1" = 300'

POINT OF BEGINNING

SUBJECT PARCEL

CITY OF VERO BEACH

CITY TO COUNTY

INDIAN RIVER COUNTY

HOLMAN STADIUM

DRAINAGE CANAL

50' WIDE PARCEL NOT INCLUDED

IRI/MFC/MCC MIN CANAL (300' R/W)

100'

STORM WATER & UTILITY EASEMENT

SOUTH SECTION LINE 34-33-39

NORTH SECTION LINE 03-33-39

28TH STREET / WALKER AVENUE BLVD.

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

887.01

500'00'47"W

43RD AVENUE

887.01

S89°45'39"E

50.00

S89°45'39"E

345.39

S00°14'21"W

85.00

S89°45'39"E

437.69

S89°45'39"E

468.25

S63°53'04"E

328.67

S18°15'41"E

386.49

N02°50'58"W

830.37

S69°27'23"W

79.898

S69°27'23"W

79.898

S69°27'23"W

79.898

S69°27'23"W

79.898

S69°27'23"W

79.898

100'

STORM WATER & UTILITY EASEMENT

SOUTH SECTION LINE 34-33-39

NORTH SECTION LINE 03-33-39

28TH STREET / WALKER AVENUE BLVD.

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

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32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

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32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

100'

STORM WATER & UTILITY EASEMENT

SOUTH SECTION LINE 34-33-39

NORTH SECTION LINE 03-33-39

28TH STREET / WALKER AVENUE BLVD.

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

100'

STORM WATER & UTILITY EASEMENT

SOUTH SECTION LINE 34-33-39

NORTH SECTION LINE 03-33-39

28TH STREET / WALKER AVENUE BLVD.

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

100'

STORM WATER & UTILITY EASEMENT

SOUTH SECTION LINE 34-33-39

NORTH SECTION LINE 03-33-39

28TH STREET / WALKER AVENUE BLVD.

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

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32-39-26-00011-0230-00001.2

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32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

100'

STORM WATER & UTILITY EASEMENT

SOUTH SECTION LINE 34-33-39

NORTH SECTION LINE 03-33-39

28TH STREET / WALKER AVENUE BLVD.

32-39-26-00011-0230-00001.1

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32-39-26-00011-0230-00001.0

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32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00011-0230-00001.2

32-39-26-00011-0230-00001.0

32-39-26-00011-0230-00001.1

32-39-26-00

To be corrected & need affidavit for County -

SELLER'S AFFIDAVIT

ACLT File No. 41078318

State of Florida
County of Indian River

Before me, the undersigned authority, duly authorized to administer oaths, this day personally appeared , who, after first being duly sworn on oath, by me, deposes and says that:

1. Affiant is the Mayor of **The City of Vero Beach, a municipal corporation of the State of Florida**, and that in said capacity, affiant can say that said **The City of Vero Beach, a municipal corporation of the State of Florida** is the owner of the following described land, to wit:

Portion of
Portions of ~~Dodgertown~~ and Dodgertown Parcel 3-A, situated in the State of Florida, County of Indian River, City of Vero Beach, and being part of Section 3, Township 33 South, Range 39 East, and being more particularly described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East; thence South 00° 00' 47" West along the West line of said Section 3 for a distance of 887.01 feet; thence South 89° 45' 39" East for a distance of 50.00 feet to a point on the East right-of-way of 43rd Avenue, said point also being the Northwest corner of Dodgertown Parcel 3A as described in Official Records Book 1961, at Page 968, of the Public Records of Indian River County, Florida; thence South 89° 45' 39" East along the North line of said Parcel 3A for a distance of 345.39 feet; thence South 00° 14' 21" West for a distance of 85.00 feet to a point on the North line of said Parcel 3A; thence continue South 89° 45' 39" East along the North line of said Parcel 3A for a distance of 437.69 feet to the Point of Beginning; thence from said Point of Beginning continue South 89° 45' 39" East along the North line of said Parcel 3A for a distance of 468.25 feet to the Northeast corner of Parcel 3A; thence run South 63° 53' 04" East for a distance of 326.67 feet to a point on the East line of Dodgertown Parcel 3A; thence South 18° 15' 41" East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A; thence South 69° 22' 53" West for a distance of 898.97 feet; thence North 02° 50' 58" West for a distance of 830.37 feet to the Point of Beginning.

2. And, that said land is free and clear of all liens, taxes, encumbrances and claims of every kind, nature and description whatsoever (including any Federal Internal Revenue Service or Florida Department of Revenue liens or warrants for unpaid taxes of any nature), except for any mortgage described in the deed of conveyance given simultaneous herewith naming **Indian River County, a political subdivision of the State of Florida**, as grantee therein, which mortgage the said grantee has agreed to assume; and except for ad valorem or other real property taxes for the calendar year in which this affidavit is dated; and restrictions, reservations, limitations, covenants, conditions and easements of record, if any; and

3. That there have been no improvements, alterations, or repairs to said land or any improvements situate thereon, within the most recent ninety (90) days for which the cost thereof has not been fully paid; and that there are no unpaid claims for labor or material furnished for repairing or improving same which remain unpaid; and

4. That any condominium or homeowner's association regular or special assessments, if any are applicable, currently

due and owing, have been paid; and

5. That any personal property situate upon subject land that is being conveyed appurtenant to the land is free and clear of all liens, encumbrances, claims and demands of all kinds whatsoever (including unpaid time payment contracts for the purchase or replacement of built-in appliances or fixtures, plumbing, air conditioners, radio or television antennas, carpeting, lawn sprinkling systems, swimming pools, window or door coverings, fences, or any other such furnishings, equipment or property); and

6. That **The City of Vero Beach, a municipal corporation of the State of Florida** has complied in all respects with the Florida Sales and/or Intangible Personal Property Tax Laws with respect to any buildings or personal property situate upon said land, if applicable; and

7. That there are no parties in possession of the premises described herein as a tenant or possessory claimant of any kind or nature; and that there are no outstanding contracts for the sale of the lands described herein to any person or persons whomsoever; nor are there any unrecorded deeds, mortgages, or other conveyances affecting title to said land; and

8. That **The City of Vero Beach, a municipal corporation of the State of Florida** is organized under the laws of the United States of America (or a State or Territory thereof);

9. That all payable real property taxes have been paid relative to the land that is the subject of this affidavit; and that there are no unpaid (but payable) taxes for the current or prior tax years; and that affiant has received no notice of any pending assessment for municipal, county, or special taxing district improvement such as water, sewer, or road projects that would affect the lands described hereinabove, that have not been paid for, or otherwise specifically revealed to the purchaser, and accepted by said purchaser as a lien, liability for payment of which has been specifically agreed to by purchaser; and

10. That no proceedings in bankruptcy or receivership have been instituted by or against the said **The City of Vero Beach, a municipal corporation of the State of Florida**; nor is there any pending litigation or dispute of any kind that might result in a judgment or other lien that would affect title to subject land; and

11. That affiant is familiar with the nature of an oath and with the penalties as provided by the laws of the State of Florida for falsely swearing to statements made in an instrument of this nature; and that this affidavit has been read by affiant, or read to affiant, and that its content is fully understood, and that all statements made herein are made as statements of fact; and that this affidavit is made for the specific purpose of inducing **Indian River County, a political subdivision of the State of Florida** to purchase said land from affiant; and to induce **Atlantic Coastal Land Title Company, LLC**, to insure the title to said land; and further the undersigned, on behalf of the said **The City of Vero Beach, a municipal corporation of the State of Florida** agrees to pay on demand to the purchaser herein identified, or to said purchaser's successors and/or assigns; and/or to **Atlantic Coastal Land Title Company, LLC**, all amounts secured by any and all liens or encumbrances not revealed herein, together with all costs, loss and reasonable attorney's fees, including attorney's fees expended in enforcement of the provisions of this paragraph, that said party may incur in connection with any such unrevealed liens, provided said liens either currently apply to such property, or a part thereof, or are subsequently established against said property and are created by **The City of Vero Beach, a municipal corporation of the State of Florida**, known by **The City of Vero Beach, a municipal corporation of the State of Florida**, or have an inception date prior to the consummation of the transaction upon which this affidavit is given; and

Nothing Further!

(Wherever used herein, the term "affiant" shall include singular and plural, singular and collective; all references to the singular shall include the plural; and the present tense shall include the past; wherever the context so admits or requires.)

Seller:

**The City of Vero Beach, a municipal
corporation of the State of Florida**

By: _____
Jay Kramer, Mayor

Sworn to and subscribed before me this ____ day of **April, 2011**, by Jay Kramer; who was personally known to me or provided identification of sufficient character to establish identify with a reasonable degree of certainty.

Notary Public

Type of identification provided (Check One):

- Driver's License
- Passport
- Government (State or Federal) ID Card
- Resident Alien ID Card
- Other

Prepared by, record and return to:
Office of the County Attorney
1801 27th St., Vero Beach, FL 32960
Telephone: 772.226.1424

4

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("First Amendment") is made and entered into as of the ____ day of _____, 2011 by and between Indian River County, a political subdivision of the State of Florida ("County") and the City of Vero Beach, a municipal corporation organized under the laws of the State of Florida ("City").

WHEREAS, on November 17, 2005, Los Angeles Dodgers LLC, a Delaware limited liability company ("Dodgers") and City entered into that certain Declaration of Covenants, Conditions, and Restrictions, recorded at OR Book 1961, Page 978, Public Records of Indian River County, Florida ("Declaration"); and

WHEREAS, on February 19, 2008, Dodgers and County entered into that certain Third Amendment to Facility Lease Agreement in which, inter alia, County succeeded to the interest of Dodgers in and to the Declaration, such that the current parties to the Declaration are County and City; and

WHEREAS, County and City are now the sole parties of interest with respect to the Declaration, and desire to amend the Declaration as set forth herein,

NOW THEREFORE, in consideration of the mutual undertakings herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.
2. **Amendment to Declaration.** The Declaration is hereby amended, as follows: (a) the real property described on Exhibit A attached hereto (Cloverleaf Property) is removed from the Declaration and is no longer subject to any covenants, conditions or restrictions set forth therein, and (b) the real property described on Exhibit B attached hereto (Parking Property) is added to the property subject to the Declaration, such that the real property described on Exhibit B attached hereto shall hereafter be subject to all covenants, conditions and restrictions set forth therein.
3. **Remaining Terms.** All remaining terms and conditions of the Declaration not amended herein shall remain in full force and effect.
4. **Recordation.** A copy of this First Amendment shall be recorded in the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed in their respective names as of the date set forth above.

ATTEST: Jeffrey K. Barton,
Clerk of Court

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY ("County")

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

AFFIX SEAL:

Approved by BCC: _____, 2011.

Approved as to form and legal sufficiency:

By: _____
Alan S. Polackwich, Sr.
County Attorney

ATTEST:

CITY OF VERO BEACH ("City")

Tammy K. Vock, City Clerk

By: _____
Jay Kramer, Mayor

AFFIX SEAL:

Approved by CC: _____, 2011

Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

Wayne R. Coment
Acting City Attorney

Monte K. Falls
Interim City Manager

EXHIBIT "A"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 3-A

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South $00^{\circ}00'47''$ West along the West line of said Section 3 for a distance of 887.01 feet;

Thence South $89^{\circ}45'39''$ East for a distance of 50.00 feet to a point on the East right-of-way of 43rd Avenue said point also being the Northwest corner of Dodgertown Parcel 3A as described in Official Record Book 1961, Page 968 of the Public Records of Indian River County, Florida;

Thence South $89^{\circ}45'39''$ East along the North line of said Parcel 3A for a distance of 345.39 feet;

Thence South $00^{\circ}14'21''$ West for a distance of 85.00 to a point on the North line of said Parcel 3A;

Thence continue South $89^{\circ}45'39''$ East along the North line of said Parcel 3A for a distance of 437.69 feet to the Point of Beginning;

Thence from the Point of Beginning continue South $89^{\circ}45'39''$ East along the North line of said Parcel 3A for a distance of 468.25 feet to the Northeast corner of Parcel 3A;

Thence South $63^{\circ}53'04''$ East for a distance of 326.67 feet to a point on the East line of Dodgertown Parcel 3A;

Thence South $18^{\circ}15'41''$ East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A;

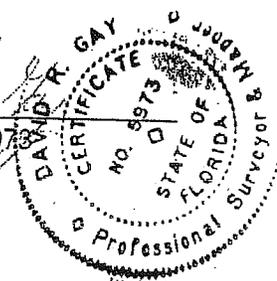
Thence South $69^{\circ}22'53''$ West for a distance of 898.97 feet;

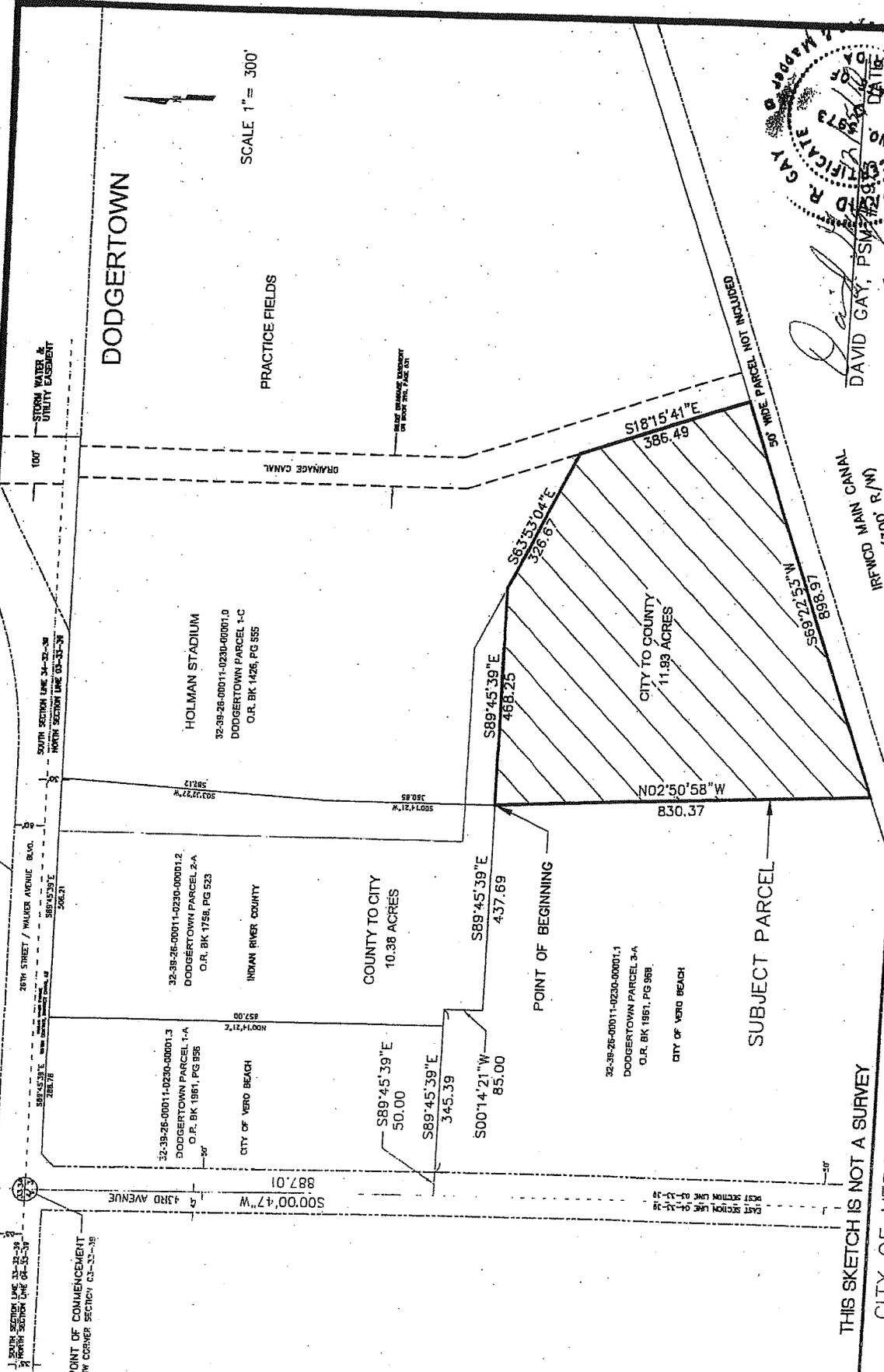
Thence North $02^{\circ}50'58''$ West for a distance of 830.37 feet to the Point of Beginning;

Said Parcel containing 519,743 square feet or 11.93 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973





DODGERTOWN

SCALE 1" = 300'

PRACTICE FIELDS



DAVID GAY, PSM
SHEET 2 OF 2

IRREVOC MAIN CANAL (300' R/W)

REV. NO.	EXHIBIT "A"
CITY PROJECT NO.	2010-20
DATE	12/2010
DRAWN BY	DG
CHECKED BY	MKF
DATE	2010-20
DESCRIPTION	

SKETCH OF PROPERTY DESCRIPTION
11.93 ACRE PARCEL-DEED CITY TO COUNTY
SECTION 03-33-39

THIS SKETCH IS NOT A SURVEY
CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
SURVEY DIVISION

EXHIBIT "B"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 2-A & 1-C

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 30.00 feet;

Thence South 89°45'39" East and parallel with the north line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3;

Thence continue South 89°45'39" East along said South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Record Book 1758, Page 523 of the Public Records of Indian River County, Florida), said point also being the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along said South right-of-way for a distance of 506.21 feet;

Thence South 3°32'27" West for a distance of 582.12 feet;

Thence South 00°14'21" West for a distance of 360.85 feet to a point on the South line of Dodgertown Parcel 2A;

Thence North 89°45'39" West along said South line of Parcel 2A for a distance of 437.69 feet to the Southwest corner of said Parcel 2A;

Thence North 00°14'21" East for a distance of 85.00 feet;

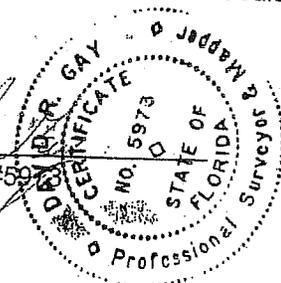
Thence North 89°45'39" West for a distance of 35.00 feet;

Thence North 00°14'21" East along the West line of said Parcel 2A for a distance of 857.00 feet to the Point of Beginning;

Said Parcel containing 452,042 square feet or 10.38 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973



5

Prepared by, record and return to:
Office of the County Attorney
1801 27th St., Vero Beach, FL 32960
Telephone: 772.226.1424

TERMINATION OF PARKING PROPERTY LEASE AGREEMENT

THIS TERMINATION OF PARKING PROPERTY LEASE AGREEMENT (“Termination Agreement”) is entered into as of the ____ day of _____, 2011 by and between Indian River County, a political subdivision of the State of Florida (“County”), the City of Vero Beach, a municipal corporation organized under the laws of the State of Florida (“City”), and MiLB Vero Beach, LLC, a Florida limited liability company (“MiLB”).

Whereas, on November 17, 2005, Los Angeles Dodgers LLC, a Delaware limited liability company (“Dodgers”) and City entered into that certain Parking Property Lease Agreement, recorded on said date in O.R. Book 1961, Page 1004, Public Records of Indian River County, Florida (“Parking Lease”); and

Whereas, on February 19, 2008, Dodgers, County and City entered into that certain Third Amendment to Facility Lease Agreement, recorded on March 17, 2008 in O.R. Book 2249, Page 2367, Public Records of Indian River County, Florida, which had the effect of terminating the Facility Lease Agreement between Dodgers and County, dated September 1, 2000; and

Whereas, by reason of the termination of the Facility Lease Agreement, and more specifically, pursuant to section 13.02 of the Parking Lease and section 3.02(f) of the Third Amendment to Facility Lease Agreement, County assumed all rights and obligations of Dodgers in and to the Parking Lease;

Whereas, MiLB may be considered a sub-lessor under the Parking Lease, by reason of section 6.05 of the Facility Lease Agreement between County and MiLB, dated May 1, 2009 and recorded on June 1, 2009 in O.R. Book 2344, Page 1405, of the Public Records of Indian River County, Florida; and

Whereas, City, County and MiLB now desire to terminate the Parking Lease,

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein.
2. **Termination of Parking Lease**. The Parking Lease is hereby terminated and declared to be of no further force or effect; provided, however, that sections 9.01, 9.02 and 9.03 (relating to indemnification) shall survive the termination, but only as to any relevant matter or claim arising or accruing prior to the effective date of this Termination Agreement.

3. **Recordation.** A copy of this Termination Agreement shall be recorded in the public records of Indian River County, Florida.

IN WITNESS WHEREOF, the parties have caused this Termination Agreement to be executed in their respective names as of the date set forth above.

ATTEST: Jeffrey K. Barton,
Clerk of Court

**BOARD OF COUNTY COMMISSIONERS,
INDIAN RIVER COUNTY ("County")**

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

AFFIX SEAL:

Approved by BCC: _____, 201__.

Approved as to form and legal sufficiency:

By: _____
Alan S. Polackwich, Sr., County Attorney

ATTEST:

CITY OF VERO BEACH ("City")

Tammy K. Vock, City Clerk

Jay Kramer, Mayor

AFFIX SEAL:

Approved by CC: _____, 2011

**Approved as to form and legal
sufficiency:**

Approved as conforming to municipal policy:

Wayne R. Coment, Acting City Attorney

Monte K. Falls, Interim City Manager

MiLB VERO BEACH, LLC, a Florida limited liability company ("MiLB")

ATTEST:

By: The National Association of Professional Baseball Leagues, Inc., as Managing Member

D. Scott Poley, Secretary

Pat O'Conner, President

CORPORATE SEAL

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by PAT O'CONNER, as President, and attested by D. Scott Poley, as Secretary, of The National Association of Professional Baseball Leagues, Inc., as Managing Member of MiLB VERO BEACH, LLC, a Florida limited liability company, who are personally known to me, or who have produced _____, as identification, and who did not take an oath.

NOTARY PUBLIC, State of Florida

Sign: _____
Print: _____
State of Florida [SEAL]
Commission No: _____
Commission Expires: _____

Prepared by, record and return to:
Office of the County Attorney
1801 27th St., Vero Beach, FL 32960
Telephone: 772.226.1424

(6)
County requested version

PARKING LICENSE AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of _____, 2011 by and between Indian River County, a political subdivision of the State of Florida (“County”), and the City of Vero Beach, a municipal corporation organized under the laws of the State of Florida (“City”).

WHEREAS, City owns, or will own through transactions completed simultaneously with the execution of this Agreement, certain parcels of real property located in the vicinity of the Dodgertown Facility; and

WHEREAS, City is willing to provide a license to County to use such parcels of real property for parking related to the Dodgertown Facility, as set forth herein.

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.
2. **Definitions.** The following terms shall have the following meanings:
 - a. License Area A shall mean real property consisting of approximately 10.38 acres located immediately west of Holman Stadium, more fully described on Exhibit A attached hereto;
 - b. License Area B shall mean real property consisting of approximately 3.3 acres located north of 26th Street and north of License Area A, more fully described on Exhibit A attached hereto;
 - c. License Area C shall mean real property consisting of approximately 4.6 acres located north of 26th Street and east of License Area B, more fully described on Exhibit A attached hereto;
 - d. License Area shall mean one or more of License Area A, License Area B or License Area C, and License Areas shall mean collectively License Area A, License Area B and License Area C;

e. Cloverleaf Property shall mean the real property consisting of approximately 11.93 acres located south of Holman Stadium, more fully described on Exhibit B attached hereto;

f. Dodgertown Facility shall mean collectively the real property owned by County, including facilities and improvements thereon, consisting of the Cloverleaf Property and the property more fully described on Exhibit C attached hereto;

g. Dodgertown Tenant shall mean any party to whom County leases (from time to time) all or a portion of the Dodgertown Facility. The parties acknowledge that the current Dodgertown Tenant is MiLB Vero Beach, LLC, a Florida limited liability company; and

h. Dodgertown Events shall mean any and all events and activities held on the premises of the Dodgertown Facility including, without limitation, sports and non-sports related events and activities, meetings and conferences, whether such events and activities are conducted by County, Dodgertown Tenant or any third party using all or a portion of the Dodgertown Facility with the consent of County or Dodgertown Tenant.

3. **Parking License.** City hereby grants to County and Dodgertown Tenant and County's other assignees (a) a license to use License Area A for general parking in connection with Dodgertown Events, and (b) a secondary license to use License Area B and License Area C for general parking in connection with Dodgertown Events, in the event that (i) License Area A is unavailable for a particular event (see paragraph 4 below), or (ii) the license to use License Area A is revoked by City. County shall have the right to use the License Areas up to twenty (20) days per calendar year. Dodgertown Tenant shall have the right to use the License Areas to the same extent as County, except that Dodgertown Tenant's use shall not be restricted with respect to the number of days per calendar year, however, Dodgertown Tenant shall coordinate with and provide City a schedule for anticipated use of the License Areas and keep City advised of any changes to such schedule.

4. **Notice of Use.** County shall provide reasonable notice of its intent to use a License Area on one or more dates specified in the notice. Within 10 days of receipt of such notice, City shall advise County of any conflict with a planned City use of the License area on the same date(s) which is incompatible with County's proposed use. If City does not advise County of a conflict within the 10 day period, County may utilize the License Area for parking as set forth in the notice. In the event of a conflict, the parties shall attempt in good faith to reconcile the conflict in a manner which accommodates the interests of both parties. If such accommodation is not possible, County may utilize another available License Area for parking.

5. **Use of License Area B or License Area C.** Whenever County uses License Area B or License Area C, County shall comply with the following additional requirements of the Federal Aviation Administration: County shall not interfere with airport operations surrounding roadways, or airport tenant operations; County must use the License Area in a safe and efficient manner; and County shall not enter the secured airfield or otherwise interfere with airport

operations. County understands that there are substantial federal fines for violations of federal laws and regulations applicable to airport facility access and use.

6. **Insurance.** County shall, at all times during the term hereof, carry commercial general liability insurance against personal injury and property damage with a company authorized to do business in the State of Florida and satisfactory to City, protecting City against any and all claims for damages to persons or property as a result of or arising out of the use and maintenance by County of the License Areas. County shall provide a certificate of insurance stating that City is an additional insured, and confirming limits of coverage not less than \$500,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. County shall supply written proof of insurance to City within fifteen (15) days of the date this Agreement is executed, and shall continue to supply such proof to City for each term such insurance coverage is renewed.

7. **Indemnification.** To the extent permitted by law, County and City each agree to indemnify and hold harmless the other, including its commissioners, council members, officers, employees and agents, against any and all claims for damages, liabilities, costs and expenses, including reasonable attorney's fees (collectively "Claims") arising out of or relating to the use of one or more License Areas pursuant to this Agreement, provided that such Claims are determined by a court of final jurisdiction to have been caused by the negligence or other legal misconduct of the indemnifying party, and provided further that nothing herein shall be construed as a waiver of the County's or the City's sovereign immunity pursuant to section 768.28, Florida Statutes.

8. **Clean Up After Use.** After each use of a License Area, County shall leave the property in substantially the same condition that it was prior to such use.

9. **Term.** The term of this Agreement shall be indefinite until the earlier to occur of the following: (a) the revocation of all licenses for License Area A, License Area B and License Area C, or (b) the permanent use of the Dodgertown Facility for a purpose other than sports, recreation or entertainment related activities.

10. **Revocation of License.** Each license granted herein shall be revocable by City in the event that each of the following occurs with respect to the real property underlying such license: (a) the City decides in good faith to use the underlying real property for a purpose incompatible with continued parking, (b) in reaching such decision, the City gives due consideration to the fact that (i) the City owns other properties in the same general area which may be suitable for such incompatible use, (ii) continued use of the License Area for general parking provides an important and valuable benefit to County, and (iii) that the City Council determines in good faith that the advantages of locating the incompatible use on a License Area outweigh the advantages to locating the incompatible use on other property owned by the City, and (c) City actually uses the License Area for the incompatible use.

11. **Remedies.** In the event of breach of this Agreement by either party, the non-breaching party shall be entitled to all remedies available in law or in equity.

12. **Litigation.** In the event of any litigation relating to or arising out of this Agreement, each party shall be responsible for and shall bear its own attorney's fees and court costs, including such fees and costs incurred at the trial and appellate level of such proceedings.

13. **Amendment.** No amendment, modification, change, or alteration of this Agreement shall be valid or binding unless accomplished in writing and executed by all of the parties hereto.

14. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties. No prior agreement or understanding shall be binding between the parties unless set forth herein.

15. **Governing Law.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Florida. Venue hereunder shall lie in Indian River County, Florida.

16. **Further Assurances.** County and City shall grant such further assurances and provide such additional documents as may be required by one another from time to time, and cooperate fully with one another in order to carry out the terms and conditions hereof and comply with the express intention of this Agreement.

17. **Severability.** In the event any term, condition, or clause of this Agreement is declared to be illegal or unenforceable by a court of competent jurisdiction, such declaration of illegality or unenforceability shall not affect or alter the legality or enforceability of any remaining term, condition, or clause hereof, provided of the parties, as set forth in this Agreement.

18. **Non-Assignment.** This Agreement shall not be assignable by either party, except that City may assign this Agreement to any party acquiring ownership of a License Area (but only to the extent of such License Area), and County may assign this Agreement to any party acquiring ownership, right of possession or other right to use of all or a substantial portion of the Dodgertown Facility.

19. **Recordation.** A copy of this Agreement shall be recorded on the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names as of the date set forth above.

ATTEST: Jeffrey K. Barton,
Clerk of Court

**BOARD OF COUNTY COMMISSIONERS,
INDIAN RIVER COUNTY ("County")**

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

AFFIX SEAL:

Approved by BCC: _____, 201__.

Approved as to form and legal sufficiency:

By: _____
Alan S. Polackwich, Sr., County
Attorney

ATTEST:

CITY OF VERO BEACH ("City")

Sign: _____
Tammy K. Vock, City Clerk

Sign: _____
Jay Kramer, Mayor

AFFIX SEAL:

Approved as to form and legal sufficiency

By: _____
City Attorney

**STATE OF FLORIDA
COUNTY OF INDIAN RIVER**

The foregoing instrument was acknowledged before me this ___ day of _____, 201__, 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 and did not take an oath.

NOTARY PUBLIC, State of Florida

Sign: _____
Print: _____
State of Florida [SEAL]
Commission No: _____
Commission Expires: _____

EXHIBIT "A"
PROPERTY DESCRIPTION
LICENSE TO USE CITY PROPERTY #2010-LA-0143
PORTIONS OF DODGERTOWN, DODGERTOWN PARCEL 2A,
AIRPORT PARCEL 19 AND AIRPORT PARCEL 17

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and Section 34, Township 32 South, Range 39 East and being more particularly bounded and described as follows:

License Area "A":

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South $00^{\circ}00'47''$ West along the West line of said Section 3 for a distance of 30.00 feet;

Thence South $89^{\circ}45'39''$ East and parallel with the north line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3;

Thence continue South $89^{\circ}45'39''$ East along said South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Record Book 1758, Page 523 of the Public Records of Indian River County, Florida), said point also being the Point of Beginning of the following described License Area "A";

Thence from the Point of Beginning continue South $89^{\circ}45'39''$ East along said South right-of-way for a distance of 506.21 feet to the Northeast corner of the 10.38 acre parcel deeded to the City of Vero Beach by Indian River County;

Thence South $03^{\circ}32'27''$ West along the East line of the said 10.38 acre parcel for a distance of 582.12 feet;

Thence South $00^{\circ}14'21''$ West along the East line of the said 10.38 acre parcel for a distance of 360.85 feet to the Southeast corner of said 10.38 acre parcel;

Thence North $89^{\circ}45'39''$ West along said South line of said 10.38 acre parcel for a distance of 437.69 feet to the Southwest corner of said parcel;

Thence North $00^{\circ}14'21''$ East for a distance of 85.00 feet;

Thence North $89^{\circ}45'39''$ West for a distance of 35.00 feet;

Thence North $00^{\circ}14'21''$ East along the West line of the said 10.38 acre parcel for a distance of 857.00 feet to the Point of Beginning;

Said Parcel containing 452,042 square feet or 10.38 acres.

License Area "B":

Commencing at the Southwest corner of Section 34, Township 32 South, Range 39 East;

Thence South $89^{\circ}45'39''$ East along the South line of Section 34 for a distance of 668.80 feet to a point;

Thence North $00^{\circ}14'21''$ East for a distance of 60.00 feet to a point on the north right-of-way of 26th Street (also known as Walker Avenue), said point being the Point of Beginning of Parcel 19;

Thence North $35^{\circ}54'04''$ East for a distance of 306.67 feet;

Thence North $89^{\circ}51'01''$ East for a distance of 596.87 feet;

Thence South $01^{\circ}16'03''$ West for a distance of 102.51 feet to a point on the North right-of-way of Aviation Boulevard;

Thence South $63^{\circ}45'16''$ West along said North right-of-way for a distance of 114.40 feet to the beginning of a curve concave to the Northwest;

Thence Southwesterly along said curve, having a radius of 950 feet and a delta of $26^{\circ}30'14''$ for an arc length of 439.45 feet to the Point of Tangency;

Thence continue North $89^{\circ}45'39''$ West along said North right-of-way of 26th Street for a distance of 247.44 feet to the Point of Beginning;

Containing 145,235 square feet more or less.

License Area "C":

Commencing at the Southwest corner of Section 34, Township 32 South, Range 39 East;

Thence South 89°45'39" East along the South line of Section 34 for a distance of 1,583.90 feet to a point;

Thence North 00°14'21" East for a distance of 281.11 feet to a point on the North right-of-way of 26th Street (also known as Aviation Boulevard), said point being the Point of Beginning of Parcel 17;

Thence North 01°16'03" East for a distance of 425.17 feet to a point;

Thence North 37°49'54" East for a distance of 107.87 feet to a point;

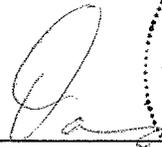
Thence North 76°19'43" East for a distance of 114.11 feet to a point;

Thence South 69°43'29" East for a distance of 648.82 feet to a point on the North right-of-way of said Aviation Boulevard, said point also being on a curve concave to the Southeast;

Thence Southwesterly along said curve, having a radius of 1,050 feet and a delta of 21°15'05" for an arc length of 389.45 feet to the Point of Tangency, said point being on the North right-of-way of Aviation Boulevard;

Thence continue South 63°45'16" West along said North right-of-way of Aviation Boulevard for a distance of 470.66 feet to the Point of Beginning;

Containing 203,914 square feet more or less.


David R. Gay, PSM #5973


Prepared by, record and return to:
Office of the County Attorney
1801 27th St., Vero Beach, FL 32960
Telephone: 772.226.1424

City Version

6

See: "Indemnity" (7)

PARKING LICENSE AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of _____, 2011 by and between Indian River County, a political subdivision of the State of Florida ("County"), and the City of Vero Beach, a municipal corporation organized under the laws of the State of Florida ("City").

WHEREAS, City owns, or will own through transactions completed simultaneously with the execution of this Agreement, certain parcels of real property located in the vicinity of the Dodgertown Facility; and

WHEREAS, City is willing to provide a license to County to use such parcels of real property for parking related to the Dodgertown Facility, as set forth herein.

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein.
2. **Definitions**. The following terms shall have the following meanings:
 - a. **License Area A** shall mean real property consisting of approximately 10.38 acres located immediately west of Holman Stadium, more fully described on Exhibit A attached hereto;
 - b. **License Area B** shall mean real property consisting of approximately 3.3 acres located north of 26th Street and north of License Area A, more fully described on Exhibit A attached hereto;
 - c. **License Area C** shall mean real property consisting of approximately 4.6 acres located north of 26th Street and east of License Area B, more fully described on Exhibit A attached hereto;
 - d. **License Area** shall mean one or more of License Area A, License Area B or License Area C, and License Areas shall mean collectively License Area A, License Area B and License Area C;

e. Cloverleaf Property shall mean the real property consisting of approximately 11.93 acres located south of Holman Stadium, more fully described on Exhibit B attached hereto;

f. Dodgertown Facility shall mean collectively the real property owned by County, including facilities and improvements thereon, consisting of the Cloverleaf Property and the property more fully described on Exhibit C attached hereto;

g. Dodgertown Tenant shall mean any party to whom County leases (from time to time) all or a portion of the Dodgertown Facility. The parties acknowledge that the current Dodgertown Tenant is MiLB Vero Beach, LLC, a Florida limited liability company; and

h. Dodgertown Events shall mean any and all events and activities held on the premises of the Dodgertown Facility including, without limitation, sports and non-sports related events and activities, meetings and conferences, whether such events and activities are conducted by County, Dodgertown Tenant or any third party using all or a portion of the Dodgertown Facility with the consent of County or Dodgertown Tenant.

3. **Parking License.** City hereby grants to County and Dodgertown Tenant and County's other assignees (a) a license to use License Area A for general parking in connection with Dodgertown Events, and (b) a secondary license to use License Area B and License Area C for general parking in connection with Dodgertown Events, in the event that (i) License Area A is unavailable for a particular event (see paragraph 4 below), or (ii) the license to use License Area A is revoked by City. County shall have the right to use the License Areas up to twenty (20) days per calendar year. Dodgertown Tenant shall have the right to use the License Areas to the same extent as County, except that Dodgertown Tenant's use shall not be restricted with respect to the number of days per calendar year, however, Dodgertown Tenant shall coordinate with and provide City a schedule for anticipated use of the License Areas and keep City advised of any changes to such schedule.

4. **Notice of Use.** County shall provide reasonable notice of its intent to use a License Area on one or more dates specified in the notice. Within 10 days of receipt of such notice, City shall advise County of any conflict with a planned City use of the License area on the same date(s) which is incompatible with County's proposed use. If City does not advise County of a conflict within the 10 day period, County may utilize the License Area for parking as set forth in the notice. In the event of a conflict, the parties shall attempt in good faith to reconcile the conflict in a manner which accommodates the interests of both parties. If such accommodation is not possible, County may utilize another available License Area for parking.

5. **Use of License Area B or License Area C.** Whenever County uses License Area B or License Area C, County shall comply with the following additional requirements of the Federal Aviation Administration: County shall not interfere with airport operations surrounding roadways, or airport tenant operations; County must use the License Area in a safe and efficient manner; and County shall not enter the secured airfield or otherwise interfere with airport

operations. County understands that there are substantial federal fines for violations of federal laws and regulations applicable to airport facility access and use.

6. Insurance. County shall, at all times during the term hereof, carry commercial general liability insurance against personal injury and property damage with a company authorized to do business in the State of Florida and satisfactory to City, protecting City against any and all claims for damages to persons or property as a result of or arising out of the use and maintenance by County of the License Areas. County shall provide a certificate of insurance stating that City is an additional insured, and confirming limits of coverage not less than \$500,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. County shall supply written proof of insurance to City within fifteen (15) days of the date this Agreement is executed, and shall continue to supply such proof to City for each term such insurance coverage is renewed.

~~7. **Indemnification.** To the extent permitted by law, County and City each agree to indemnify and hold harmless the other, including its commissioners, council members, officers, employees and agents, against any and all claims for damages, liabilities, costs and expenses, including reasonable attorney's fees (collectively "Claims") arising out of or relating to the use of one or more License Areas pursuant to this Agreement, provided that such Claims are determined by a court of final jurisdiction to have been caused by the negligence or other legal misconduct of the indemnifying party, and provided further that nothing herein shall be construed as a waiver of the County's or the City's sovereign immunity pursuant to section 768.28, Florida Statutes.~~

7.(a) **Assumption of Risk.** County accepts the condition of the License Areas as is and recognizes and hereby expressly and fully assumes all risks, known and unknown, which arise or might arise incidental to or in any way connected with the condition and use of the Premises. Licensee acknowledges and agrees that the City has not made and makes no warranty of any kind as to the condition of the Premises or fitness of the Premises for any particular purpose.

(b) **Release and Indemnification (Premises).** County hereby releases and forever discharges the City, its elected officials, officers, employees, and agents (hereinafter "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, attorneys' fees, and costs through trial and appeal, arising out of, incidental to, or in any way connected with the condition or use of the License Areas.

(c) **Indemnification (Use).** County agrees to indemnify and hold the City 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 appeal, arising out of, incidental to, or in any way connected with the use or occupancy of the License Areas by County, Dodgertown

Tenant, or their assignees, or any act or omission of County, Dodgertown Tenant, their assignees, or any of their employees, representatives, agents, members, guests, invitees, contractors, or sub-contractors.

8. **Clean Up After Use.** After each use of a License Area, County shall leave the property in substantially the same condition that it was prior to such use.

9. **Term.** The term of this Agreement shall be indefinite until the earlier to occur of the following: (a) the revocation of all licenses for License Area A, License Area B and License Area C, or (b) the permanent use of the Dodgertown Facility for a purpose other than sports, recreation or entertainment related activities.

10. **Revocation of License.** Each license granted herein shall be revocable by City in the event that each of the following occurs with respect to the real property underlying such license: (a) the City decides in good faith to use the underlying real property for a purpose incompatible with continued parking, (b) in reaching such decision, the City gives due consideration to the fact that (i) the City owns other properties in the same general area which may be suitable for such incompatible use, (ii) continued use of the License Area for general parking provides an important and valuable benefit to County, and (iii) that the City Council determines in good faith that the advantages of locating the incompatible use on a License Area outweigh the advantages to locating the incompatible use on other property owned by the City, and (c) City actually uses the License Area for the incompatible use.

11. **Remedies.** In the event of breach of this Agreement by either party, the non-breaching party shall be entitled to all remedies available in law or in equity.

12. **Litigation.** In the event of any litigation relating to or arising out of this Agreement, each party shall be responsible for and shall bear its own attorney's fees and court costs, including such fees and costs incurred at the trial and appellate level of such proceedings.

13. **Amendment.** No amendment, modification, change, or alteration of this Agreement shall be valid or binding unless accomplished in writing and executed by all of the parties hereto.

14. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties. No prior agreement or understanding shall be binding between the parties unless set forth herein.

15. **Governing Law.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Florida. Venue hereunder shall lie in Indian River County, Florida.

16. **Further Assurances.** County and City shall grant such further assurances and provide such additional documents as may be required by one another from time to time, and cooperate fully with one another in order to carry out the terms and conditions hereof and comply with the express intention of this Agreement.

17. **Severability.** In the event any term, condition, or clause of this Agreement is declared to be illegal or unenforceable by a court of competent jurisdiction, such declaration of illegality or unenforceability shall not affect or alter the legality or enforceability of any remaining term, condition, or clause hereof, provided of the parties, as set forth in this Agreement.

18. **Non-Assignment.** This Agreement shall not be assignable by either party, except that City may assign this Agreement to any party acquiring ownership of a License Area (but only to the extent of such License Area), and County may assign this Agreement to any party acquiring ownership, right of possession, or other right to use of all or a substantial portion of the Dodgertown Facility.

19. **Recordation.** A copy of this Agreement shall be recorded on the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names as of the date set forth above.

ATTEST: Jeffrey K. Barton,
Clerk of Court

**BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY ("County")**

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

AFFIX SEAL:

Approved by BCC: _____ 2011

Approved as to form and legal sufficiency:

By: _____
Alan S. Polackwich, Sr., County Attorney

ATTEST:

CITY OF VERO BEACH ("City")

Tammy K. Vock, City Clerk

Jay Kramer, Mayor

CITY SEAL

Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

Wayne R. Coment
Acting City Attorney

Monte K. Falls
Interim City Manager

EXHIBIT "A"
PROPERTY DESCRIPTION
LICENSE TO USE CITY PROPERTY #2010-LA-0143
PORTIONS OF DODGERTOWN, DODGERTOWN PARCEL 2A,
AIRPORT PARCEL 19 AND AIRPORT PARCEL 17

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and Section 34, Township 32 South, Range 39 East and being more particularly bounded and described as follows:

License Area "A":

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 30.00 feet;

Thence South 89°45'39" East and parallel with the north line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3;

Thence continue South 89°45'39" East along said South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Record Book 1758, Page 523 of the Public Records of Indian River County, Florida), said point also being the Point of Beginning of the following described License Area "A";

Thence from the Point of Beginning continue South 89°45'39" East along said South right-of-way for a distance of 506.21 feet to the Northeast corner of the 10.38 acre parcel deeded to the City of Vero Beach by Indian River County;

Thence South 03°32'27" West along the East line of the said 10.38 acre parcel for a distance of 582.12 feet;

Thence South 00°14'21" West along the East line of the said 10.38 acre parcel for a distance of 360.85 feet to the Southeast corner of said 10.38 acre parcel;

Thence North 89°45'39" West along said South line of said 10.38 acre parcel for a distance of 437.69 feet to the Southwest corner of said parcel;

Thence North 00°14'21" East for a distance of 85.00 feet;

Thence North 89°45'39" West for a distance of 35.00 feet;

Thence North 00°14'21" East along the West line of the said 10.38 acre parcel for a distance of 857.00 feet to the Point of Beginning;

Said Parcel containing 452,042 square feet or 10.38 acres.

License Area "B":

Commencing at the Southwest corner of Section 34, Township 32 South, Range 39 East;

Thence South $89^{\circ}45'39''$ East along the South line of Section 34 for a distance of 668.80 feet to a point;

Thence North $00^{\circ}14'21''$ East for a distance of 60.00 feet to a point on the north right-of-way of 26th Street (also known as Walker Avenue), said point being the Point of Beginning of Parcel 19;

Thence North $35^{\circ}54'04''$ East for a distance of 306.67 feet;

Thence North $89^{\circ}51'01''$ East for a distance of 596.87 feet;

Thence South $01^{\circ}16'03''$ West for a distance of 102.51 feet to a point on the North right-of-way of Aviation Boulevard;

Thence South $63^{\circ}45'16''$ West along said North right-of-way for a distance of 114.40 feet to the beginning of a curve concave to the Northwest;

Thence Southwesterly along said curve, having a radius of 950 feet and a delta of $26^{\circ}30'14''$ for an arc length of 439.45 feet to the Point of Tangency;

Thence continue North $89^{\circ}45'39''$ West along said North right-of-way of 26th Street for a distance of 247.44 feet to the Point of Beginning;

Containing 145,235 square feet more or less.

License Area "C":

Commencing at the Southwest corner of Section 34, Township 32 South, Range 39 East;

Thence South 89°45'39" East along the South line of Section 34 for a distance of 1,583.90 feet to a point;

Thence North 00°14'21" East for a distance of 281.11 feet to a point on the North right-of-way of 26th Street (also known as Aviation Boulevard), said point being the Point of Beginning of Parcel 17;

Thence North 01°16'03" East for a distance of 425.17 feet to a point;

Thence North 37°49'54" East for a distance of 107.87 feet to a point;

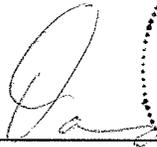
Thence North 76°19'43" East for a distance of 114.11 feet to a point;

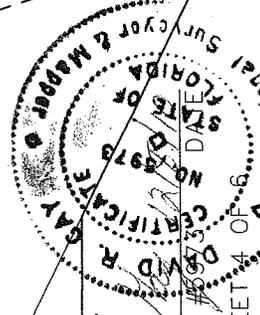
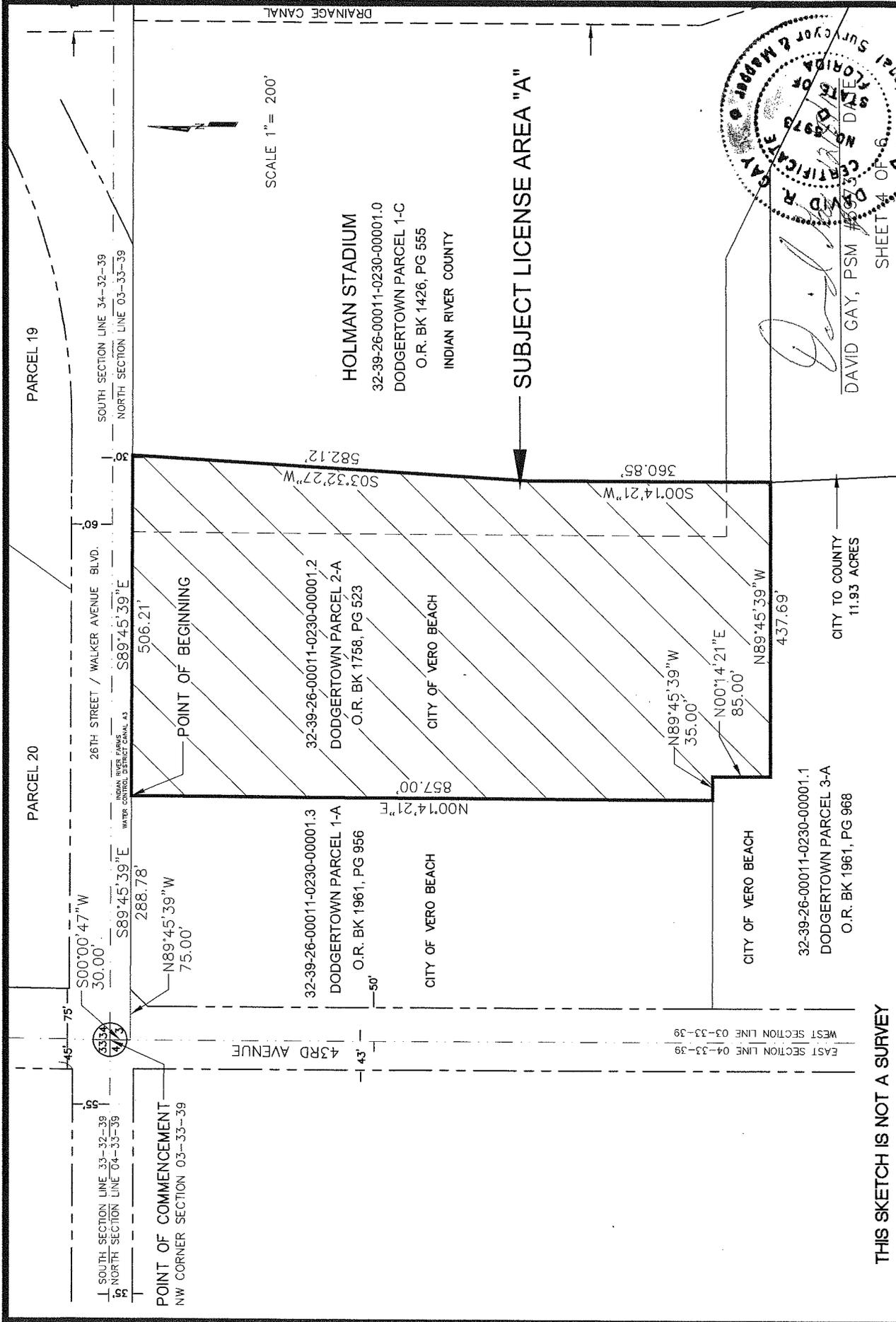
Thence South 69°43'29" East for a distance of 648.82 feet to a point on the North right-of-way of said Aviation Boulevard, said point also being on a curve concave to the Southeast;

Thence Southwesterly along said curve, having a radius of 1,050 feet and a delta of 21°15'05" for an arc length of 389.45 feet to the Point of Tangency, said point being on the North right-of-way of Aviation Boulevard;

Thence continue South 63°45'16" West along said North right-of-way of Aviation Boulevard for a distance of 470.66 feet to the Point of Beginning;

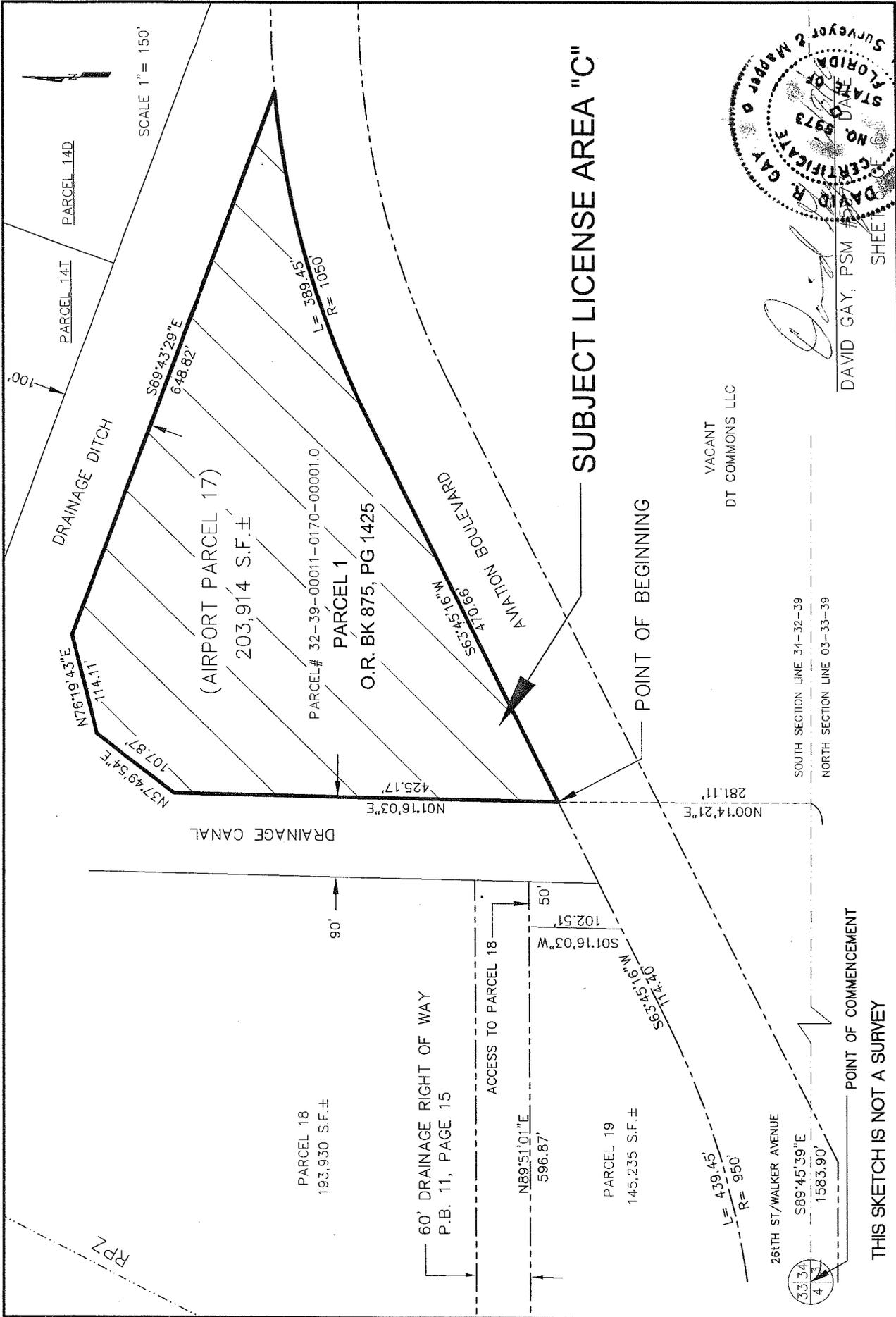
Containing 203,914 square feet more or less.


David R. Gay, PSM #5973

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH		EXHIBIT "A"	
DEPARTMENT OF PUBLIC WORKS		CITY PROJECT NO.	2010-LA-143
SURVEY DIVISION		DATE	11/2010
		DRWN BY	DG
		CHKD BY	MKF
		DESCRIPTION	
SKETCH OF PROPERTY DESCRIPTION LICENSE TO USE CITY PROPERTY DODGERTOWN PARCEL 2A PORTION OF SECTION 03-33-39			



SUBJECT LICENSE AREA "C"

VACANT
DT COMMONS LLC

David Gay

DAVID GAY, PSM #5247
SHEET 03



EXHIBIT "A"

CITY PROJECT NO. 2010-LA-143

DATE 11/2010

DRAWN BY DG

CHKD BY MKF

DESCRIPTION

SKETCH OF PROPERTY DESCRIPTION
LICENSE TO USE CITY PROPERTY
AIRPORT PARCEL 17
PORTION OF SECTION 34-32-39

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
SURVEY DIVISION

THIS SKETCH IS NOT A SURVEY

7

PARKING ESTOPPEL CERTIFICATE

This Parking Estoppel Certificate ("Certificate") was executed the date last entered below by and between Indian River County, a political subdivision of the State of Florida ("County") and the City of Vero Beach, a municipal corporation of the State of Florida (City").

In re: Maximum Capacity Parking at Dodgertown Facility; Compliance with City Parking Codes and Regulations.

NOW THEREFORE, in consideration of \$10 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, City and County make the following joint acknowledgements, and City makes the following statements and representations to County, with full knowledge that County will rely on such statements and representations in closing and completing a property exchange transaction between City and County, as set forth more fully in that certain Property Exchange Agreement, dated February 1, 2011 ("Exchange Transaction"):

- 1. Joint Acknowledgments.** City and County jointly acknowledge that (a) County owns a 61.75 acre parcel of real property located in Vero Beach, Florida, formerly known as Dodgertown, which parcel is more fully described on Exhibit A attached hereto, (b) in the Exchange Transaction, City will transfer to County an 11.93 acre parcel located south of Holman Stadium, which parcel is more fully described on Exhibit B attached hereto (the 61.75 acre parcel and the 11.93 acre parcel are collectively referred to as the "Dodgertown Facility"), (c) in the Exchange Transaction, County will transfer to City a 10.38 acre parcel located west of Holman Stadium, which parcel is more fully described on Exhibit C attached hereto ("Parking Property"), (d) County has rights to park on the Parking Property pursuant to the Parking Lease Agreement between the parties, but such rights will be reduced to a revocable license pursuant to a Parking License Agreement to be signed as part of the Exchange Transaction; (e) in the event that the license created by the Parking License Agreement is in fact revoked by City, County, and its tenants and successors, may be required to provide parking for Dodgertown Events (as defined below) entirely within the Dodgertown Facility, including the areas historically used for parking, the four (4) baseball practice fields and two (2) half baseball practice fields, and other accessible and open areas suitable for parking ("Onsite Parking"), (f) before agreeing to and closing the Exchange Transaction, County requires and will rely upon a clear, irrevocable commitment from City, in the form of its statements and representations below, that Onsite Parking for Dodgertown Events will meet and comply with all City parking codes and regulations.
- 2. Statements and Representations by City.** City states and represents to County that: (a) City parking codes and regulations allow Onsite Parking for Dodgertown Events, (b) Onsite Parking provides a sufficient number of parking spaces to comply with all City parking codes and regulations for concurrent maximum use of the Dodgertown Facility, including Holman Stadium, the clubhouse, the hotel, the conference center, the executive offices and the various baseball fields ("Dodgertown Events"), and (c) to the extent that City's parking codes and regulations may change in the future, the Dodgertown Facility

will be considered "grandfathered in" under the codes and regulations existing as of the date of this estoppel certificate.

IN WITNESS WHEREOF, the parties have caused this Certificate to be executed in their respective names as follows:

ATTEST: Jeffrey K. Barton,
Clerk of Court

BOARD OF COUNTY
COMMISSIONERS,
INDIAN RIVER COUNTY ("County")

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

AFFIX SEAL:

Date: _____

Approved by BCC: _____, 201__.

Approved as to form and legal
sufficiency:

By: _____
Alan S. Polackwich, Sr., County Attorney

ATTEST:

CITY OF VERO BEACH ("City")

Tammy K. Vock, City Clerk

Jay Kramer, Mayor

AFFIX SEAL:

Date: _____

Approved as to form and legal sufficiency:

Approved as conforming to municipal
policy:

Wayne R. Coment, Acting City Attorney

Monte K. Falls, Interim City Manager

EXHIBIT A

A PARCEL OF LAND LYING IN SECTION 3, TOWNSHIP 33 SOUTH, RANGE 39 EAST, INDIAN RIVER COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 33 SOUTH, RANGE 39 EAST, PROCEED NORTH $89^{\circ}45'39''$ WEST, A DISTANCE OF 1997.62 FEET TO A POINT; THENCE SOUTH $04^{\circ}15'11''$ WEST, A DISTANCE OF 30.07 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF AIRPORT DRIVE (A/K/A 34th AVENUE, A 90 FOOT RIGHT-OF-WAY) SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WESTERLY RIGHT-OF-WAY LINE SOUTH $10^{\circ}36'49''$ WEST, A DISTANCE OF 37.55 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 1125.14 FEET AND A CENTRAL ANGLE OF $09^{\circ}30'08''$; THENCE SOUTH ALONG SAID CURVE, A DISTANCE OF 186.60 FEET; THENCE SOUTH $20^{\circ}06'57''$ WEST, A DISTANCE OF 82.11 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 1825.86 FEET AND A CENTRAL ANGLE OF $19^{\circ}54'25''$; THENCE SOUTH ALONG SAID CURVE, A DISTANCE OF 634.38 FEET; THENCE SOUTH $00^{\circ}12'32''$ WEST, A DISTANCE OF 55.06 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF INDIAN RIVER FARMS DRAINAGE DISTRICT MAIN CANAL (300 FOOT RIGHT-OF-WAY); THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE SOUTH $69^{\circ}22'53''$ WEST, A DISTANCE OF 482.50 FEET; THENCE NORTH $15^{\circ}50'35''$ WEST, A DISTANCE OF 50.17 FEET TO A POINT 50.00 FEET NORTH OF AFORESAID MAIN CANAL NORTH RIGHT-OF-WAY LINE; THENCE SOUTH $69^{\circ}22'53''$ WEST ALONG SAID LINE PARALLEL AND 50.00 FEET NORTH OF SAID MAIN CANAL NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 1001.21 FEET; THENCE NORTH $18^{\circ}15'26''$ WEST, A DISTANCE OF 386.46 FEET; THENCE NORTH $63^{\circ}53'04''$ WEST, A DISTANCE OF 476.06 FEET; THENCE NORTH $89^{\circ}45'39''$ WEST, A DISTANCE OF 414.56 FEET; THENCE NORTH $00^{\circ}14'21''$ EAST, A DISTANCE OF 876.82 FEET TO A POINT 30.00 FEET SOUTHERLY OF THE NORTH LINE OF SECTION 3, TOWNSHIP 33 SOUTH, RANGE 39 EAST; THENCE SOUTH $89^{\circ}45'39''$ EAST ALONG A LINE BEING 30.00 FEET SOUTHERLY OF AND PARALLEL WITH SAID SECTION LINE, A DISTANCE OF 2557.93 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 3-A

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 887.01 feet;

Thence South 89°45'39" East for a distance of 50.00 feet to a point on the East right-of-way of 43rd Avenue said point also being the Northwest corner of Dodgertown Parcel 3A as described in Official Record Book 1961, Page 968 of the Public Records of Indian River County, Florida;

Thence South 89°45'39" East along the North line of said Parcel 3A for a distance of 345.39 feet;

Thence South 00°14'21" West for a distance of 85.00 to a point on the North line of said Parcel 3A;

Thence continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 437.69 feet to the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 468.25 feet to the Northeast corner of Parcel 3A;

Thence South 63°53'04" East for a distance of 326.67 feet to a point on the East line of Dodgertown Parcel 3A;

Thence South 18°15'41" East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A;

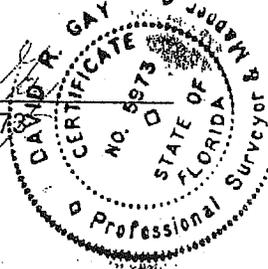
Thence South 69°22'53" West for a distance of 898.97 feet;

Thence North 02°50'58" West for a distance of 830.37 feet to the Point of Beginning;

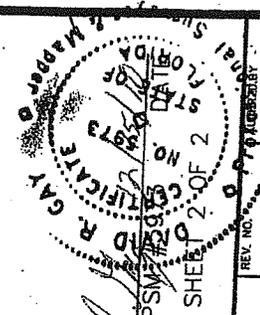
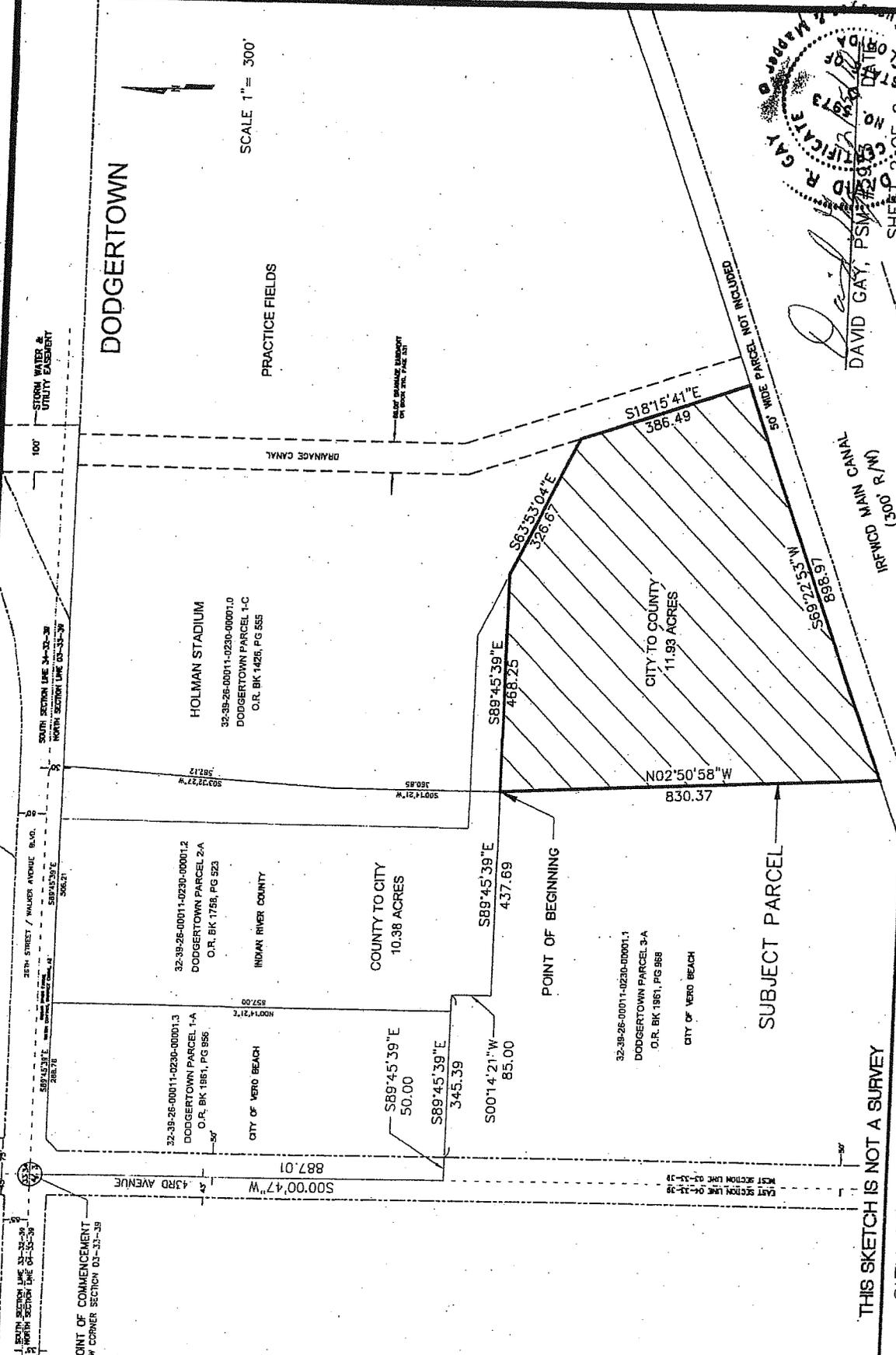
Said Parcel containing 519,743 square feet or 11.93 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973



The seal is circular with a double border. The outer border contains the text "DAVID R. GAY" at the top and "Professional Surveyor" at the bottom. The inner border contains "STATE OF FLORIDA" at the bottom. In the center, it says "CERTIFICATE" at the top, "No. 5973" in the middle, and "D" at the bottom.



DAVID GAY, PSM
SHEET 2 OF 2

REV. NO. 01/08/2010		EXHIBIT "A"
DATE	DATE	CITY PROJECT NO.
12/2010	2010-20	2010-20
DRWN BY	CHKD BY	DESCRIPTION
DG	MKF	11.93 ACRE PARCEL-DEED CITY TO COUNTY
SECTION 03-33-39		

EXHIBIT "C"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 2-A & 1-C

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 30.00 feet;

Thence South 89°45'39" East and parallel with the north line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3;

Thence continue South 89°45'39" East along said South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Record Book 1758, Page 523 of the Public Records of Indian River County, Florida), said point also being the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along said South right-of-way for a distance of 506.21 feet;

Thence South 3°32'27" West for a distance of 582.12 feet;

Thence South 00°14'21" West for a distance of 360.85 feet to a point on the South line of Dodgertown Parcel 2A;

Thence North 89°45'39" West along said South line of Parcel 2A for a distance of 437.69 feet to the Southwest corner of said Parcel 2A;

Thence North 00°14'21" East for a distance of 85.00 feet;

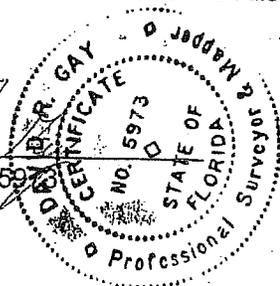
Thence North 89°45'39" West for a distance of 35.00 feet;

Thence North 00°14'21" East along the West line of said Parcel 2A for a distance of 857.00 feet to the Point of Beginning;

Said Parcel containing 452,042 square feet or 10.38 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973



8

Prepared by, record and return to:
Office of the County Attorney
1801 27th St., Vero Beach, FL 32960
Telephone: 772.226.1424

FIRST AMENDMENT TO INTERLOCAL AGREEMENT

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT ("First Amendment") is entered into as of the ____ day of _____, 2011 by and between Indian River County, a political subdivision of the State of Florida ("County") and the City of Vero Beach, a municipal corporation organized under the laws of the State of Florida ("City").

WHEREAS, on September 1, 2000, County and City entered into that certain Interlocal Agreement with respect to the Dodgertown Facilities and the Land as described therein ("Interlocal Agreement"), said Interlocal Agreement being recorded on September 12, 2000 in O.R. Book 1353 at Page 0971 of the public records of Indian River County, Florida; and

WHEREAS, the Interlocal Agreement grants to City a certain percentage interest (described in the Interlocal Agreement as 10.7%) in the Land and Facilities and the Sale Proceeds, as set forth more fully therein; and

WHEREAS, County and City are about to enter into an exchange of real property transaction in which County will receive the property described on Exhibit A attached hereto ("Cloverleaf Property"), and City will receive the property described on Exhibit B attached hereto ("Parking Property"), both of which properties are adjacent to the Land; and

WHEREAS, County and City wish to make clear that, following the exchange of properties, neither the Cloverleaf Property nor the Parking Property will be subject to the Interlocal Agreement.

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein.
2. **Definitions**. Except as set forth herein, capitalized terms shall have the meaning set forth in the Interlocal Agreement.
3. **Exclusion from Interlocal Agreement**. The parties (a) confirm that prior to the exchange of properties contemplated above, neither the Cloverleaf Property nor the Parking Property is included in the definition of "Facility," "Facilities" or "Land" as set forth in the Interlocal Agreement, nor are said properties otherwise subject to the Interlocal Agreement, and (b) agree that following the exchange of properties, neither the Cloverleaf Property nor the Parking Property will be included in the definition of "Facility," "Facilities" or "Land" as set

forth in the Interlocal Agreement, nor will said properties otherwise be subject to the Interlocal Agreement.

4. **Sale of Land and/or Facilities and Cloverleaf Property.** In the event that County sells the Land and/or Facilities in a simultaneous transaction with the sale of the Cloverleaf Property, County and City shall negotiate in good faith a reasonable and fair allocation of the total purchase price between the Land and Facilities and the Cloverleaf Property so that City's percentage interest in the Land and Facilities and the Sale Proceeds is not unfairly reduced or diminished.

5. **Recordation.** A copy of this First Amendment shall be recorded on the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed in their respective names as of the date set forth above.

ATTEST: Jeffrey K. Barton,
Clerk of Court

**BOARD OF COUNTY COMMISSIONERS,
INDIAN RIVER COUNTY ("County")**

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

AFFIX SEAL:

Approved by BCC: _____, 2011.

Approved as to form and legal sufficiency:

By: _____
Alan S. Polackwich, Sr., County Attorney

ATTEST:

CITY OF VERO BEACH ("City")

Tammy K. Vock, City Clerk

By: _____
Jay Kramer, Mayor

AFFIX SEAL:

Approved by CC: _____, 2011

**Approved as to form and legal
sufficiency**

Approved as conforming to municipal policy:

Wayne R. Coment, Acting City Attorney

Monte K. Falls, Interim City Manager

EXHIBIT "A"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 3-A.

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

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Thence South 00°00'47" West along the West line of said Section 3 for a distance of 887.01 feet;

Thence South 89°45'39" East for a distance of 50.00 feet to a point on the East right-of-way of 43rd Avenue said point also being the Northwest corner of Dodgertown Parcel 3A as described in Official Record Book 1961, Page 968 of the Public Records of Indian River County, Florida;

Thence South 89°45'39" East along the North line of said Parcel 3A for a distance of 345.39 feet;

Thence South 00°14'21" West for a distance of 85.00 to a point on the North line of said Parcel 3A;

Thence continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 437.69 feet to the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 468.25 feet to the Northeast corner of Parcel 3A;

Thence South 63°53'04" East for a distance of 326.67 feet to a point on the East line of Dodgertown Parcel 3A;

Thence South 18°15'41" East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A;

Thence South 69°22'53" West for a distance of 898.97 feet;

Thence North 02°50'58" West for a distance of 830.37 feet to the Point of Beginning;

Said Parcel containing 519,743 square feet or 11.93 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.

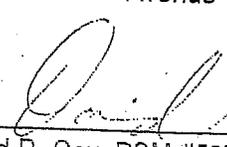

David R. Gay, PSM #5973



EXHIBIT "B"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 2-A & 1-C

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 30.00 feet;

Thence South 89°45'39" East and parallel with the north line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3;

Thence continue South 89°45'39" East along said South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Record Book 1758, Page 523 of the Public Records of Indian River County, Florida), said point also being the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along said South right-of-way for a distance of 506.21 feet;

Thence South 3°32'27" West for a distance of 582.12 feet;

Thence South 00°14'21" West for a distance of 360.85 feet to a point on the South line of Dodgertown Parcel 2A;

Thence North 89°45'39" West along said South line of Parcel 2A for a distance of 437.69 feet to the Southwest corner of said Parcel 2A;

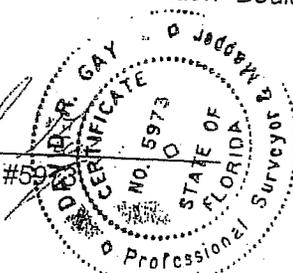
Thence North 00°14'21" East for a distance of 85.00 feet;

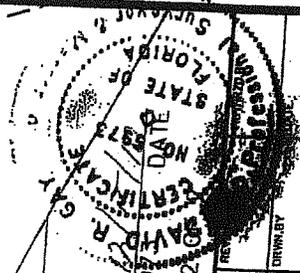
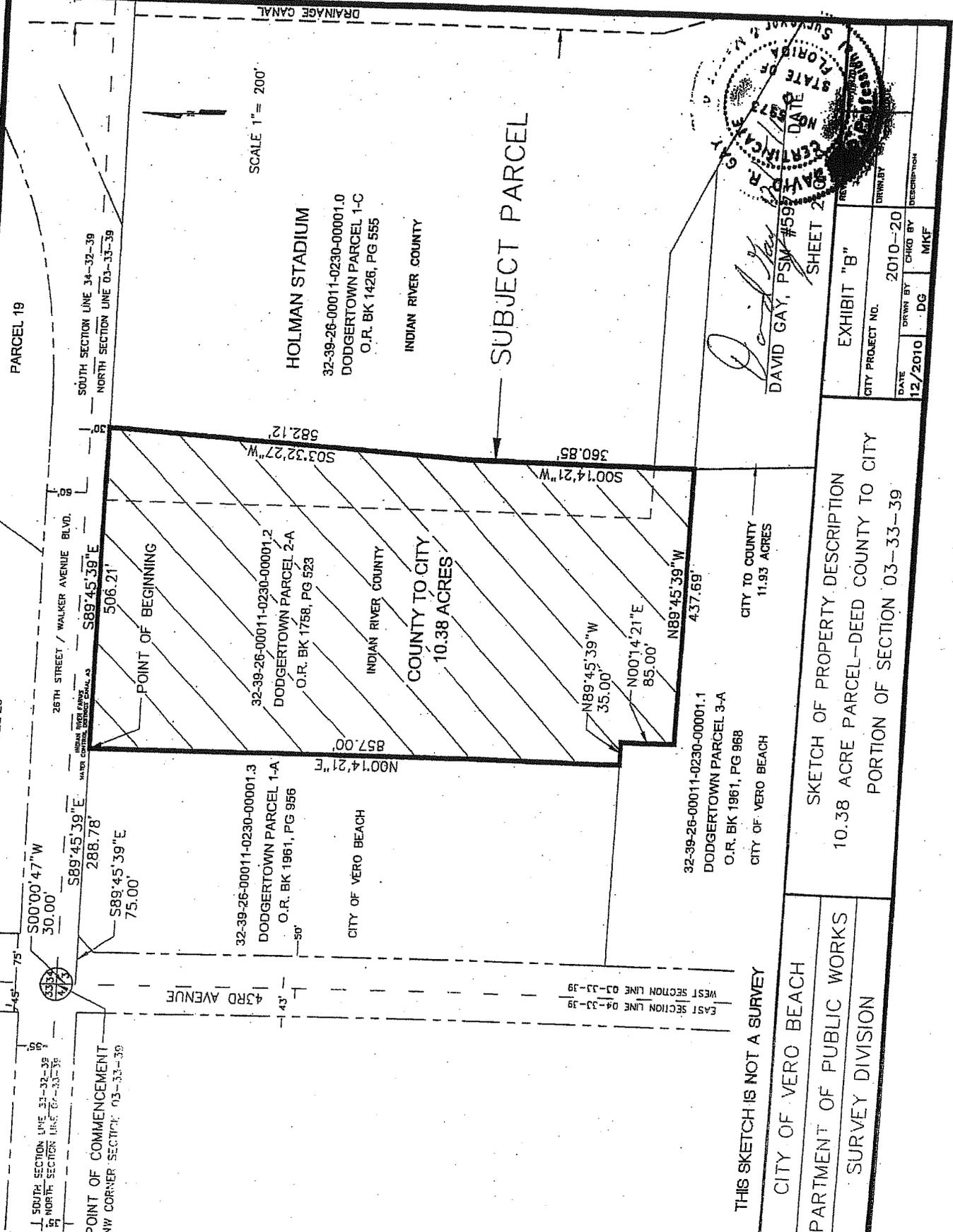
Thence North 89°45'39" West for a distance of 35.00 feet;

Thence North 00°14'21" East along the West line of said Parcel 2A for a distance of 857.00 feet to the Point of Beginning;

Said Parcel containing 452,042 square feet or 10.38 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973




DAVID GAY, PSM #599
 SHEET 2 OF 2

DATE	12/2010	DRAWN BY	DG	CHECKED BY	MIKF
CITY PROJECT NO.	2010-20				
EXHIBIT	"B"				

SKETCH OF PROPERTY DESCRIPTION
 10.38 ACRE PARCEL-DEED COUNTY TO CITY
 PORTION OF SECTION 03-33-39

THIS SKETCH IS NOT A SURVEY
 CITY OF VERO BEACH
 DEPARTMENT OF PUBLIC WORKS
 SURVEY DIVISION

PROPERTY EXCHANGE AGREEMENT

THIS AGREEMENT to exchange real property ("Agreement") is made and entered into as of the 1st day of February, 2011 by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, 1801 27th Street, Vero Beach, Florida 32960 ("County") and the CITY OF VERO BEACH, a municipality of the State of Florida, 1053 20th Place, Vero Beach, Florida 32960 ("City") as follows:

WHEREAS, in August 2001, the County purchased the property formerly known as Dodgertown, now known as the Vero Beach Sports Village, a 61.75 acre site that was the former spring training location of the Los Angeles Dodgers ("Dodgertown"); and

WHEREAS, in June 2004, the County acquired a 9.13 acre parcel of property located to the west and south of Holman Stadium ("County Property"); and

WHEREAS, in November 2005, the City purchased two parcels of property that made up a portion of the old Dodgertown nine hole golf course: a 30.87 acre tract lying at the northeast corner of 43rd Avenue and the Main Relief Canal together with a 6.13 acre parcel lying at the southeast corner of 43rd Avenue and 26th Street ("City Property"); and

WHEREAS, the parties have identified portions of the aforesaid properties which they desire to exchange: (a) an 11.93 acre parcel in the southeast portion of the City Property, which parcel is more fully described on Exhibit A attached hereto ("Cloverleaf Property"), and (b) a 10.38 acre parcel consisting of 8.53 acres of the County Property and 1.85 acres of the Dodgertown property located immediately east and adjacent to the aforesaid 8.53 acres, which parcel is more fully described on Exhibit B attached hereto ("Parking Property"); and

WHEREAS, the County agrees to transfer the Parking Property to the City, and the City agrees to transfer the Cloverleaf Property to the County, subject to the terms and conditions set forth below; and

WHEREAS, the exchange is made by the County pursuant to section 125.37, Florida Statutes, and by the City pursuant to section 2-372 of the Code of Ordinances of the City of Vero Beach, and has been advertised by each party once a week for two consecutive weeks in the Vero Beach Press Journal,

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals.** The above recitations are true and correct and are incorporated herein.
2. **Exhibits.** All Exhibits attached to this Agreement are incorporated into the Agreement.

3. **Exchange of Properties.** The County shall convey the Parking Property to the City by Special Warranty Deed, and the City shall convey the Cloverleaf Property to the County by Special Warranty Deed.

4. **Deed Restrictions.** The parties shall amend the Declaration of Covenants, Conditions, and Restrictions recorded at OR Book 1961, Page 978, Public Records of Indian River County, Florida ("Declaration") (all OR Book and Page references hereafter shall refer to the Public Records of Indian River County, Florida), to (i) remove the Cloverleaf Property from the Declaration, and (ii) include the Parking Property in the Declaration. Additionally, at the election of the County, either the parties shall amend the Collateral Development Agreement recorded at OR Book 1426, Page 596, to remove the Cloverleaf Property from the definition of "Adjacent Property" and include such property within the definition of "Baseball Facilities," or the County shall adopt a resolution or other unilateral document permitting the Cloverleaf Property to be used for a cloverleaf of youth or softball dimension baseball fields and related activities, or for any other purpose consistent with the definition of "Baseball Facilities"; provided, however, that nothing contained herein, or in the resolution or other unilateral document shall be interpreted to restrict in any way the County's right, as set forth in the Collateral Development Agreement, to permit any other use on the Cloverleaf Property.

5. **Parking.** The parties shall (a) terminate the Parking Property Lease Agreement recorded at OR Book 1961, Page 1004, and (b) enter into a Parking License Agreement with respect to the Parking Property and two other parcels of property owned by the City and located to the north of Dodgertown, consisting of a 3.3 acre site north of 26th Street and north of Holman Stadium, and a 4.6 acre site north of 26th Street and east of Holman Stadium.

6. **Parking Certification.** The City shall certify to the County that parking in compliance with all City parking codes and regulations for maximum capacity events at Dodgertown exists onsite within the Dodgertown facility, including the areas historically used for parking, the four (4) baseball practice fields and two (2) half baseball practice fields, and other accessible, open areas suitable for parking within the facility.

7. **Interlocal Agreement.** The parties shall amend the Interlocal Agreement recorded at OR Book 1353, Page 971 to make clear that neither the Cloverleaf Property nor the Parking Property shall be subject to such agreement.

8. **Conveyance of Easements by the City.** The City shall convey to the County (a) an easement for drainage of stormwater from 43rd Avenue in its future expanded condition across the remaining City Property to the existing retention pond, (b) an easement for access and maintenance to the pump house, pumps, and pipes at the southwest corner of the City Property to the existing retention pond, and (c) an easement to locate on the City Property adjoining the Cloverleaf Property up to 33.33% of the new retention pond to be constructed on the Cloverleaf Property ("New Retention Pond"), and thereafter to use the portion of the New Retention Pond located on the City Property (together with the portion located on the Cloverleaf Property) for drainage, irrigation, stormwater retention and maintenance purposes related to the Dodgertown property and the Cloverleaf Property. The easements described above shall be drafted in such a manner, or shall be modified at the appropriate time, to apply to the New Retention Pond, after

such pond is constructed. To the extent that the easements described herein are not completed and executed at the time of closing, the requirement to execute and deliver such easements shall survive the closing.

9. **Conveyance of Easements by the County.** The County shall convey to the City (a) an easement to use the existing retention pond, including the related pump house and pump, for drainage, stormwater retention and irrigation purposes relating to those parcels that make up the remaining City Property and the Parking Property, and (b) an easement to use the existing retention pond, including the related pump house and pump, for drainage of stormwater from 26th Street in its future expanded condition. The easements described above shall be drafted in such a manner, or shall be modified at the appropriate time, to apply to the New Retention Pond (including the portion of such pond constructed on the Cloverleaf Property), after such pond is constructed. To the extent that the easements described herein are not completed and executed at the time of closing, the requirement to execute and deliver such easements shall survive the closing.

10. **Conditions to Closing.** The closing of the exchange shall be conditioned upon the occurrence of each and every of the following conditions:

- a) The preparation of final transaction documents implementing the provisions of this agreement;
- b) The execution and delivery by MiLB Vero Beach, LLC and National Association of Baseball Leagues, Inc. of a First Amendment to Facility Lease Agreement, a Consent and Waiver to certain of the final transaction documents, and a Termination of Parking Property Lease Agreement;
- c) The execution and delivery by DT Commons, LLC of a Third Amendment to Collateral Development Agreement or, if acceptable to the County, the adoption of a Resolution by the County permitting the use of the Cloverleaf Property for purposes other than the "Permitted Use" as defined in the Collateral Development Agreement;
- d) Title information and insurance reasonably acceptable to the recipient of each of the exchanged parcels, including no lien affidavits at closing. Such title information and insurance shall be at the sole cost of the party requesting such information and insurance;
- e) Satisfactory environmental assessments, studies or analyses, as required by either party. Such assessments, studies or analyses shall be at the sole cost of the party requesting such items;
- f) Other closing documents reasonably required by either party;
- g) Compliance by the County with section 125.37, Florida Statutes, and by the City with section 2-372 of the Code of Ordinances of the City of Vero Beach;
- h) All of the above shall be in form and substance acceptable to the City Council and the County Commission, and their respective staffs.

11. **Closing.** Each party agrees to proceed with due diligence to close the transaction as soon as reasonably possible. Each party shall pay its own closing costs and recording fees.

12. 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 health department.

IN WITNESS WHEREOF the County and the City has caused these presents to be executed in their names, the day and year first above written.

Attest: Jeffrey K. Barton,
Clerk of Court

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

BY: Lena Allen
Deputy Clerk

BY: Bob Solari, Chairman
Bob Solari, Chairman



CC Approved: February 1, 2011

Approved:

Approved as to form and legal sufficiency

By: Joseph A. Baird
Joseph A. Baird
County Administrator

By: Alan S. Polackwich, Sr.
Alan S. Polackwich, Sr.
County Attorney

Attest:

CITY OF VERO BEACH, FLORIDA

BY: Tammy K. Vock
Tammy K. Vock
City Clerk

BY: Jay Kramer
Jay Kramer, Mayor

Council Approved: 2-1-11

Approved as conforming to
municipal policy:

Approved as to form and legal sufficiency:

By: Monte Falls
Monte Falls
Interim City Manager

By: Charles Vitunac
Charles Vitunac ASST. City Atty.
City Attorney

EXHIBIT "A"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 3-A

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Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 887.01 feet;

Thence South 89°45'39" East for a distance of 50.00 feet to a point on the East right-of-way of 43rd Avenue said point also being the Northwest corner of Dodgertown Parcel 3A as described in Official Record Book 1961, Page 968 of the Public Records of Indian River County, Florida;

Thence South 89°45'39" East along the North line of said Parcel 3A for a distance of 345.39 feet;

Thence South 00°14'21" West for a distance of 85.00 to a point on the North line of said Parcel 3A;

Thence continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 437.69 feet to the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 468.25 feet to the Northeast corner of Parcel 3A;

Thence South 63°53'04" East for a distance of 326.67 feet to a point on the East line of Dodgertown Parcel 3A;

Thence South 18°15'41" East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A;

Thence South 69°22'53" West for a distance of 898.97 feet;

Thence North 02°50'58" West for a distance of 830.37 feet to the Point of Beginning;

Said Parcel containing 519,743 square feet or 11.93 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #59730



EXHIBIT "B"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 2-A & 1-C

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Thence South 00°00'47" West along the West line of said Section 3 for a distance of 30.00 feet;

Thence South 89°45'39" East and parallel with the north line of said Section 3 for a distance of 75.00 feet to a point on the South right-of-way of the Indian River Farms Water Control District Canal A-3;

Thence continue South 89°45'39" East along said South right-of-way for a distance of 288.78 feet to the Northwest corner of Dodgertown Parcel 2A (also known as "A Portion of Dodgertown Parcel 2") in Official Record Book 1758, Page 523 of the Public Records of Indian River County, Florida), said point also being the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along said South right-of-way for a distance of 506.21 feet;

Thence South 3°32'27" West for a distance of 582.12 feet;

Thence South 00°14'21" West for a distance of 360.85 feet to a point on the South line of Dodgertown Parcel 2A;

Thence North 89°45'39" West along said South line of Parcel 2A for a distance of 437.69 feet to the Southwest corner of said Parcel 2A;

Thence North 00°14'21" East for a distance of 85.00 feet;

Thence North 89°45'39" West for a distance of 35.00 feet;

Thence North 00°14'21" East along the West line of said Parcel 2A for a distance of 857.00 feet to the Point of Beginning;

Said Parcel containing 452,042 square feet or 10.38 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973



DRAINAGE CANAL

PARCEL 19

PARCEL 20

SOUTH SECTION LINE 33-32-39
NORTH SECTION LINE 04-33-39

POINT OF COMMENCEMENT
NW CORNER SECTION 03-33-39

S00°00'47"W
30.00'

S89°45'39"E
288.78'

S89°45'39"E
75.00'

26TH STREET / WALKER AVENUE BLVD.
INDIAN RIVER COUNTY WATER CONTROL DISTRICT CANAL A3

S89°45'39"E
506.21'

SOUTH SECTION LINE 34-32-39
NORTH SECTION LINE 03-33-39

43RD AVENUE
EAST SECTION LINE 04-33-39
WEST SECTION LINE 03-33-39

SCALE 1" = 200'

HOLMAN STADIUM
32-39-26-00011-0230-00001.0
DODGETTOWN PARCEL 1-C
O.R. BK 1426, PG 555

INDIAN RIVER COUNTY

SUBJECT PARCEL

POINT OF BEGINNING

S03°32'27"W
582.12'

32-39-26-00011-0230-00001.2
DODGETTOWN PARCEL 2-A
O.R. BK 1758, PG 523

INDIAN RIVER COUNTY

COUNTY TO CITY
10.38 ACRES

S00°14'21"W
360.85'

N89°45'39"W
35.00'

N00°14'21"E
85.00'

N89°45'39"W
437.69'

32-39-26-00011-0230-00001.1
DODGETTOWN PARCEL 3-A
O.R. BK 1961, PG 968
CITY OF VERO BEACH

CITY TO COUNTY
11.93 ACRES

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH

DEPARTMENT OF PUBLIC WORKS

SURVEY DIVISION

SKETCH OF PROPERTY DESCRIPTION
10.38 ACRE PARCEL--DEED COUNTY TO CITY
PORTION OF SECTION 03-33-39

EXHIBIT "B"

CITY PROJECT NO. 2010-20

DATE 11/2010
DRAWN BY DG
CHKD BY MKF
DESCRIPTION



10

Prepared by, record and return to:
Office of the County Attorney
1801 27th St., Vero Beach, FL 32960
Telephone: 772.226.1424

FIRST AMENDMENT TO FACILITY LEASE AGREEMENT

THIS FIRST AMENDMENT is made and entered into as of the ____ day of _____, 2011 to that certain Facility Lease Agreement by and between Indian River County, a political subdivision of the State of Florida (“County”) and MiLB Vero Beach LLC, a Florida limited liability company (“MiLB”), dated as of May 1, 2009 (“Agreement”).

WHEREAS, as of May 1, 2009, County and MiLB entered into the Agreement whereby County leased to MiLB the Land, the Facility and the FF&E, and transferred to MiLB the exclusive right and obligation to use, manage, operate and maintain the Facility for the term set forth therein; and

WHEREAS, based upon further negotiations between the parties and with the City of Vero Beach, Florida (“COVB”), the parties desire to amend the Agreement with respect to the Land, the Parking Lease and the Parking Property, the Improvements, and other related matters.

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein.
2. **Definitions**. Except as set forth herein, all capitalized terms herein shall have the same meaning as set forth in the Agreement.
3. **Land**. The definition of “Land” as set forth in section 1.02(q) is hereby amended, as follows: (a) the real property described on Exhibit A attached hereto is added to the definition of “Land” and is therefore subject to all terms and conditions of the Agreement, and (b) the real property described on Exhibit B attached hereto is removed from the definition of “Land” and is therefore no longer subject to the terms and conditions of the Agreement.
4. **MiLB Events**. All references in the Agreement to “Dodgers Events” are hereby changed to “Dodgertown Events,” and new section 1.02(bb) is added as follows: “Dodgertown Events” shall mean any and all events and activities held on the premises of the Land and Facility including, without limitation, sports and non-sports related events and activities, meetings and conferences, whether such events and activities are conducted by County, MiLB or any third party using all or a portion of the Land and Facility with the consent of County or MiLB.

5. **Parking.** The provisions of the Agreement relating to parking are amended, as follows:

(a) section 1.02(v) is deleted and replaced with the following: “Parking License Agreement means the Parking License Agreement entered into as of _____, 2011 by and between the County and COVB which, *inter alia*, governs use rights for the City Parking Property,”

(b) section 1.02(w) is deleted and replaced with the following: “City Parking Property shall mean the real property subject to the Parking License Agreement, and Facility Parking Property shall mean the following areas contained within the Land: (i) the real property which has historically been used for parking in connection with activities and events held at the facility, (ii) those portions of the four (4) baseball practice fields and two (2) half baseball practice fields which are suitable for parking, and (iii) other accessible and open areas which are suitable for parking; and

(c) section 6.05 is deleted in its entirety and replaced with the following: “Parking. The City Parking Property is owned by the City, subject to the terms and conditions of the Parking License Agreement, and the Facility Parking Property is owned by the County, subject to the terms of this Agreement. MiLB shall have the right to use the City Parking Property for Dodgertown Events in accordance with the terms and conditions of the Parking License Agreement, which terms and conditions are hereby approved and accepted by MiLB. MiLB acknowledges that its right to use the City Parking Property for Dodgertown Events could be terminated by COVB in accordance with the terms and conditions of the Parking License Agreement. In such event, MiLB agrees that the Facility Parking Property is and will be adequate for all parking purposes relating to its use and operation of the Land and Facility. Upon expiration or termination of this Agreement, all rights of MiLB to use the City Parking Property or the Facility Parking Property for any purpose shall terminate.”

6. **Improvements.** The provisions of the Agreement relating to Improvements are amended, as follows:

(a) section 1.02(o) is deleted in its entirety and replaced with the following: “Improvements means the improvements constructed or to be constructed on the Land and Facilities during the term of the Agreement, or any extension thereof, consisting of the addition of field lights to two (2) of the existing playing fields in 2011, the construction of a cloverleaf of four (4) youth dimension baseball fields on the real property described on Exhibit A attached hereto in 2011, and the construction of a regulation size soccer field in the area of practice field number four in 2011.” and

(b) section 8.03(a) and (b) are deleted in their entirety and replaced with the following: “Immediate Facility Improvements.

(a) County, at its expense, will add field lights to two (2) existing playing fields in 2011 and will construct a cloverleaf of four (4) youth dimension baseball fields on the

real property described on Exhibit A attached hereto in 2011. Field lighting for the two (2) existing playing fields shall meet the requirements of Class AAA and Class AA field lighting for a new facility which are 100fc (foot candle) average in infield and 70fc average in outfield. County shall not pay for these improvements out of the Capital Reserve Account;

(b) County will construct a regulation size soccer field in the area of practice field number four in 2011 at its expense. County shall not pay for this construction out of the Capital Reserve Account.”

7. **Good Standing – No Violation.** County and MiLB agree that, as of the date hereof, the Agreement is in good standing, neither party is in violation or default of any provision of the Agreement, and both parties are in full compliance with all provisions of the Agreement.

8. **Conforming Terms.** All remaining terms and conditions of the Agreement are hereby conformed to be consistent with the amendments set forth herein.

9. **Remaining Terms.** All remaining terms and conditions of the Agreement not amended or conformed herein shall remain in full force and effect.

10. **Recordation.** A copy of this First Amendment shall be recorded on the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names as of the date set forth above.

ATTEST: Jeffrey K. Barton,
Clerk of Court

**BOARD OF COUNTY COMMISSIONERS,
INDIAN RIVER COUNTY (“County”)**

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

AFFIX SEAL:

Approved by BCC: _____, 201__.

Approved as to form and legal sufficiency:

By: _____
Alan S. Polackwich, Sr., County Attorney

Signed, sealed and delivered in the presence of:

Print name: _____

Print name: _____

MiLB VERO BEACH LLC, a Florida limited liability company ("MiLB"), by National Association of Professional Baseball Leagues, Inc., a Florida corporation, its managing member

By: _____

Print Name: _____

Print Title: _____

**STATE OF FLORIDA
COUNTY OF INDIAN RIVER**

The foregoing instrument was acknowledged before me this ___ day of _____, 201__, by _____, the _____ of National Association of Professional Baseball Leagues, Inc., a Florida corporation, managing member of MiLB VERO BEACH LLC, a Florida limited liability company, who is personally known to me, or who has produced _____, as identification, who did not take an oath.

NOTARY PUBLIC, State of Florida

Sign: _____

Print: _____

State of Florida [SEAL]

Commission No: _____

Commission Expires: _____

11

CONSENT AND WAIVER BY MiLB VERO BEACH, LLC AND NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, INC. TO AGREEMENTS

This ___ day of _____, 2011, MiLB Vero Beach, LLC, a Florida limited liability company ("MiLB"), in its capacity as tenant under that certain Facility Lease Agreement between MiLB and Indian River County, a political subdivision of the State of Florida ("County"), dated as of May 1, 2009, and as a party to related documents, and National Association of Professional Baseball Leagues, Inc., a Florida corporation ("NAPBL"), in its capacity as Guarantor under that certain Guaranty, dated May 1, 2009, hereby consent to each and every of the following agreements or documents (collectively "Agreements"):

1. Property Exchange Agreement, between County and City of Vero Beach, a municipal corporation organized under the laws of the State of Florida ("City"), dated _____, 2011;
2. Third Amendment to Collateral Development Agreement entered into among County, City and DT Commons, LLC, a Florida limited liability company ("DT Commons"), dated _____, 2011;
3. First Amendment to Declaration of Covenants, Conditions and Restrictions entered into between County and City, dated _____, 2011;
4. Termination of Parking Property Lease Agreement entered into between County and City, dated _____, 2011;
5. Parking License Agreement entered into between County and City, dated _____, 2011;
6. Parking Estoppel Certificate, between City and County; and

Additionally, NAPBL hereby consents to the following agreement:

7. First Amendment to Facility Lease Agreement, between County and MiLB, dated _____, 2011.

(collectively "Agreements").

MiLB and NAPBL consent to the Agreements for the purpose of irrevocably memorializing and establishing that MiLB and NAPBL have been provided copies of the Agreements prior to execution by the parties, and MiLB and NAPBL (a) consent to, and have no objection to or disagreement with, the Agreements, and hereby waive any such objections or disagreements, (b) agree that the Agreements do not cause or create any default or breach by County, City or DT Commons in any agreement or other obligation to which either MiLB or NAPBL, or both, are a party or a third-party beneficiary and (c) acknowledge that County, City and DT Commons will rely upon this Consent and Waiver in executing the Agreements.

IN WITNESS WHEREOF, the parties have caused this Consent and Waiver to be executed in their respective names as of the date set forth above.

MILB VERO BEACH LLC, a Florida limited liability company ("MiLB"), by National Association of Professional Baseball Leagues, Inc., a Florida corporation, its managing member

NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, INC., a Florida corporation ("NAPBL")

By: _____
Print Name: _____
Print Title: _____

By: _____
Print Name: _____
Print Title: _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY GIVING PRIOR CONSENT TO THE DEVELOPMENT OF THE CLOVERLEAF PROPERTY FOR PURPOSES OTHER THAN THE "PERMITTED USE" AS SET FORTH IN THE COLLATERAL DEVELOPMENT AGREEMENT

WHEREAS, Los Angeles Dodgers, Inc. and Vero Acquisitions, LLLP, entered into that certain Collateral Development Agreement, dated August 29, 2001 and recorded at OR Book 1426 Page 0596, Public Records of Indian River County, Florida ("Original Collateral Development Agreement") (all OR Book and Page references hereafter shall refer to the Public Records of Indian River County, Florida), which was amended by that certain First Amendment to Collateral Development Agreement, between Los Angeles Dodgers, LLC and Dodgertown Venture LLLP, dated June 24, 2004 and recorded at OR Book 1758 Page 0516 ("First Amendment"), and was further amended by that certain Second Amendment to Collateral Development Agreement, among Los Angeles Dodgers, LLC, the City of Vero Beach, a municipal corporation of the State of Florida ("City") and DT Commons, LLC, dated November 17, 2005 and recorded at OR Book 1961 Page 0985 ("Second Amendment") (the Original Collateral Development Agreement, First Amendment and Second Amendment collectively "Collateral Development Agreement"); and

WHEREAS, the Collateral Development Agreement establishes certain rights, responsibilities and restrictions with respect to the Adjacent Property, as defined therein; and

WHEREAS, the Adjacent Property includes the property described on Exhibit A attached hereto ("Cloverleaf Property"); and

WHEREAS, section 3 of the Second Amendment provides, as follows: "Notwithstanding anything to the contrary contained in the Collateral Development Agreement, the City, at its sole cost and expense, shall develop the City Property solely as (i) a municipally-owned, public golf course, or (ii) green space, or (iii) a park-like setting or (iv) any combination of the foregoing three uses (the "Permitted Use"). The City shall not develop and/or permit the use of the City Property for any other use or purpose whatsoever without the prior written consent of both the Dodgers and the County, which consent may be granted or denied by either the Dodgers or the County in the exercise of their respective sole and absolute discretion"; and

WHEREAS, the County, Los Angeles Dodgers, LLC and the City entered into that certain Third Amendment to Facility Lease Agreement, dated February 19, 2008 and recorded at OR Book 2249 Page 2367, which provides in section 3.02(b): "Because the Collateral Development Agreement constitutes covenants running with the land, the County shall automatically and without further instrument succeed to the interest of the Dodgers in and to the Collateral Development Agreement"; and

WHEREAS, as a result of the aforesaid transactions, the County is the sole party authorized to give prior written consent to the City, or to its successors in interest, to use the Cloverleaf Property for any use or purpose other than a Permitted Use (as described in the Second Amendment); and

RESOLUTION 2011-__

WHEREAS, the County and the City are about to undertake a transaction in which, inter alia, (i) the City will transfer the Cloverleaf Property to the County, and (ii) the County intends to develop the Cloverleaf Property as a cloverleaf of four youth or softball dimension baseball fields, and related facilities ("Baseball Fields"),

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, THAT

In accordance with and pursuant to the Collateral Development Agreement, specifically section 3 of the Second Amendment, the County hereby gives its written consent to the City, and to any successor of the City, including, without limitation, the County, to develop the Cloverleaf Property for (i) Baseball Fields, or (ii) any other purpose consistent with the purposes of the Baseball Facilities, as defined in the Collateral Development Agreement.

The foregoing resolution was moved for adoption by Commissioner _____ and seconded by Commissioner _____, and upon being put to a vote, the vote as follows:

- Chairman Bob Solari _____
- Vice Chairman Gary C. Wheeler _____
- Commissioner Wesley S. Davis _____
- Commissioner Joseph E. Flescher _____
- Commissioner Peter D. O'Bryan _____

The Chairman thereupon declared the resolution duly passed and adopted this ____ day of February, 2011.

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

By: _____
Bob Solari, Chairman

ATTEST: Jeffrey K. Barton
Clerk of Court

By: _____
Deputy Clerk

Approved as to form and legal sufficiency.

By: _____
Alan S. Polackwich, Sr., County Attorney

EXHIBIT "A"
PROPERTY DESCRIPTION
PORTIONS OF DODGERTOWN AND DODGERTOWN PARCEL 3-A

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Section 3, Township 33 South, Range 39 East;

Thence South 00°00'47" West along the West line of said Section 3 for a distance of 887.01 feet;

Thence South 89°45'39" East for a distance of 50.00 feet to a point on the East right-of-way of 43rd Avenue said point also being the Northwest corner of Dodgertown Parcel 3A as described in Official Record Book 1961, Page 968 of the Public Records of Indian River County, Florida;

Thence South 89°45'39" East along the North line of said Parcel 3A for a distance of 345.39 feet;

Thence South 00°14'21" West for a distance of 85.00 to a point on the North line of said Parcel 3A;

Thence continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 437.69 feet to the Point of Beginning;

Thence from the Point of Beginning continue South 89°45'39" East along the North line of said Parcel 3A for a distance of 468.25 feet to the Northeast corner of Parcel 3A;

Thence South 63°53'04" East for a distance of 326.67 feet to a point on the East line of Dodgertown Parcel 3A;

Thence South 18°15'41" East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A;

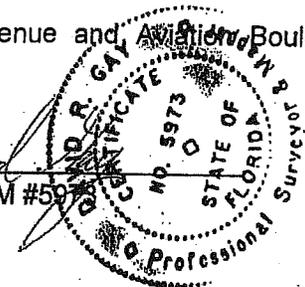
Thence South 69°22'53" West for a distance of 898.97 feet;

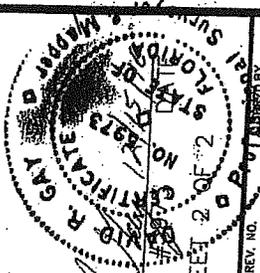
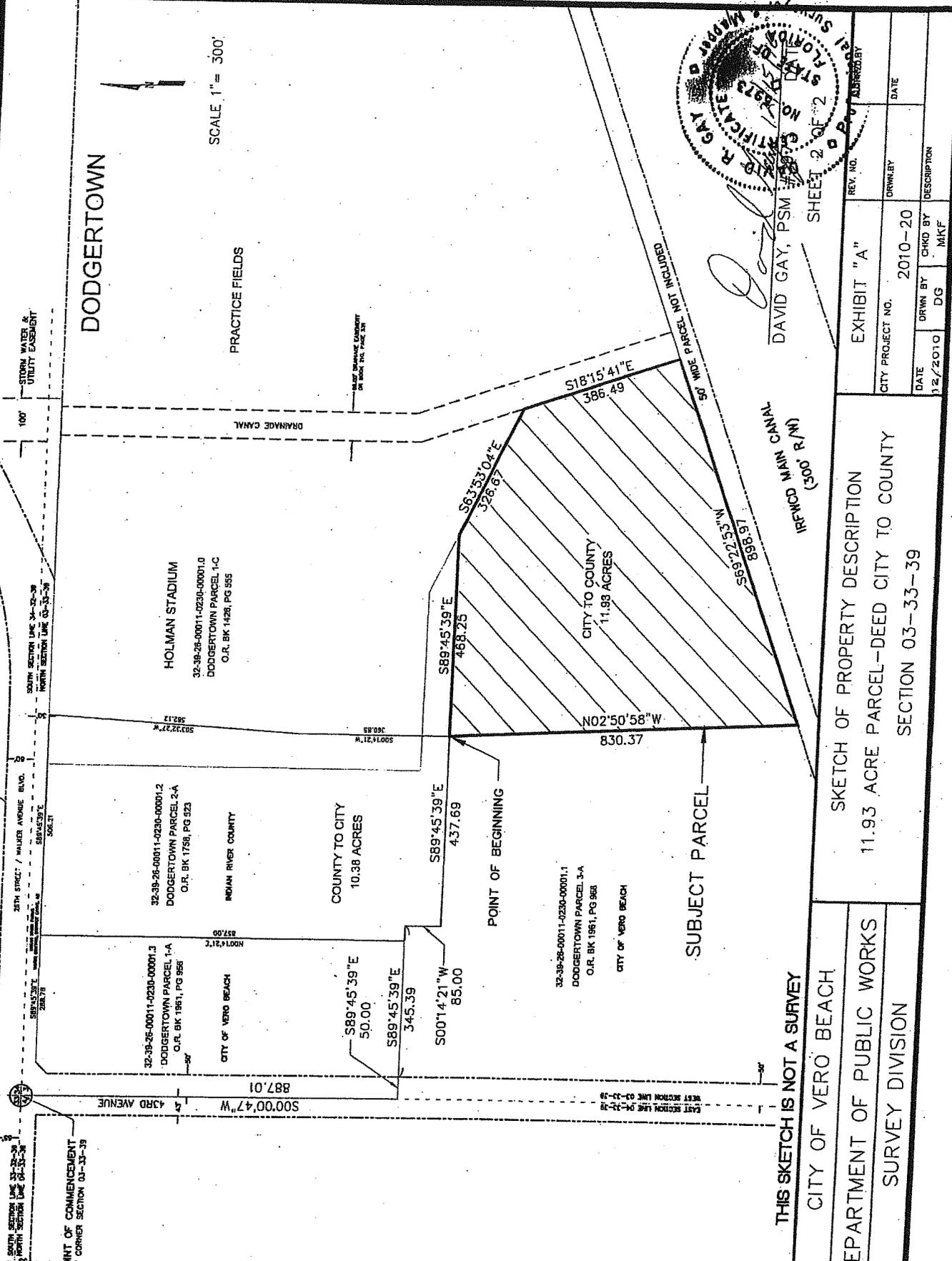
Thence North 02°50'58" West for a distance of 830.37 feet to the Point of Beginning;

Said Parcel containing 519,743 square feet or 11.93 acres.

Said parcel shall be subject to stormwater easements for the 43rd Avenue and Aviation Boulevard improvement projects as required.


David R. Gay, PSM #5973





DAVID GAY, PSM
SHEET 2 OF 2

REV. NO.	EXHIBIT "A"
DATE	CITY PROJECT NO.
12/2010	2010-20
DRAWN BY	CHKD BY
DG	MKCF
DESCRIPTION	

SKETCH OF PROPERTY DESCRIPTION
11.93 ACRE PARCEL-DEED CITY TO COUNTY
SECTION 03-33-39

THIS SKETCH IS NOT A SURVEY
CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
SURVEY DIVISION



City Council Agenda Item

Meeting of May 3, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager *MK Falls*

DATE: April 26, 2011

SUBJECT: 26th Avenue Drainage Improvements Project
COVB Public Works Project No. 2010-03

REQUESTED BY: Assistant City Engineer

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

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



DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: William B. Messersmith, PE, Assistant City Engineer
DEPT: Public Works

DATE: April 26, 2011

RE: **26th Avenue Drainage Improvements Project**
COVB Public Works Project No. 2010-03

*WBY
4/26/11*

Recommendation:

- Place this item on the City Council's Agenda for May 3, 2011;
- Request Approval from City Council to proceed with construction of the budgeted improvements using Public Works personnel.

Funding:

This Item is budgeted under account number 304.9900.541.610003 in the amount of \$175,000.

Background:

This project is one of several neighborhood drainage projects initiated by staff in response to drainage complaints. The project was capitalized in the 2009-2014 5-year plan as part of the approved 2009-2010 budget, and the design and required permitting were recently completed. The proposed drainage improvements consist of piping and associated structures as well as stormwater pollution abatement features required by St. Johns River Water Management District (SJRWMD).

We recommend the project move forward for construction. In addition, we recommend that the construction be performed by City of Vero Beach Public Works personnel.

WBM/ntn

V:\LAND_PROJECTS\2010\2010-03 26th Ave Drainage\Docs\Agenda_Proceed with Construction_Apr 26 2011.docx



20-3)



City Council Agenda Item Meeting of May 3, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager

*MK Falls
4/26*

DATE: April 26, 2011

SUBJECT: Request for Approval - Bid #110-11/PJW – Sub #10

REQUESTED BY: Director of Electric T&D

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

Request Council review and approval based on the attached supporting documentation.

Request Council review and possible action.

No action required. (Information only)



DEPARTMENTAL CORRESPONDENCE

TO: Monte Falls, Interim City Manager
FROM: Randall McCamish, Director Electric T & D 
DATE: April 26, 2011
SUBJECT: Request for Council Approval - Bid #110-11/PJW Sub #10

Recommendation:

I am requesting that the following item be placed on the agenda for approval at the May 3, 2011 City Council meeting.

Sub #10 LTC Drive Mechanism Repair and Replacement of 69kV Bushings - Bid #110-11/PJW. I recommend that the contract be awarded to Waukesha Electric for up to \$56,475.00.

Funding:

The cost will be charged to account #403.5400.531.667364.

Background:

The Purchasing Department sent out a request for bids and received (2) responses. The attached tabulation shows that Waukesha Electric submitted the lowest bid including all of the alternative options. The Load Tap Changer (LTC), which allows the voltage to be regulated automatically, no longer works and must be repaired. In addition, the 69kV bushings show significant signs of deterioration and need to be replaced. Valuable time and money can be saved by replacing the bushings and repairing the LTC at the same time.

Attachments

xc: Phyllis Walton, Purchasing
Randy Pfarr, T & D

OK - JTL - 4/26/2011



INTER

OFFICE

MEMO

To: Randall McCamish

From: Randy Pfarr

Date: July 24, 2009

Subject: BID #110-11/PJW Sub #10 LTC Drive Mechanism Repair and Replacement of 69kv Bushings

Attached are the memo, bid tabulation, and bids forwarded by Purchasing for the above referenced bid.

Based on the information provided, I would recommend awarding the contract to Waukesha Electric. At this time, the Lump Sum and the Optional Alternate Adder 3 are what we need to begin the replacement and repairs for Substation #10. There is the possibility that we might have to include Optional Alternate Adder 1 and Optional Alternate Adder 2 should we make that determination at a later date.

RP:gkb
Attachments

INTERDEPARTMENTAL MEMO

Date: 04/05/11
To: Randall McCamish, Director, Electric T&D
From: Phyllis Walton, Assistant Manager of Purchasing/Warehouse 
Re: BID #110-11/PJW Sub #10 LTC Drive Mechanism Repair & Replacement of 69kV Bushings

The Purchasing Department received two (2) responses to the issuance of the request for bids. Enclosed is the bid tabulation and copies of the bids.

Should your recommendation be for more than \$50,000, it should be submitted for Council approval. Recommendations for the next Council meeting should be submitted to the City Manager by Noon, Tuesday, one week prior to the scheduled meeting.

Should you have any questions regarding the bids, please do not hesitate to contact me.

Enclosures

CITY OF VERO BEACH
ELECTRICAL T&D

SUBSTATION #10 LOAD TAP CHANGER DRIVE MECHANISM REPAIR & REPLACEMENT OF 69KV BUSHINGS

OPENED: 04/05/11

COVB BID #110-11/PJW

DESCRIPTION	Waukesha Electric	ABB
Lump Sum	\$24,500.00	\$59,775.00
Optional Alternate Adder 1 *	24,200.00	
Optional Alternate Adder 2 *	3,500.00	
Optional Alternate Adder 3 *	4,275.00	
Addendum #1	✓	Not Provided
Addendum #2	✓	Not Provided
Bid Bond	✓	Not Provided
Drug Free	✓	✓
Questionnaire	✓	✓

* See Bid for Details

Purchasing Division



1. Scope of Work

Waukesha Service is pleased to provide crew and equipment to perform the following scope of work:

Equipment: RTE- ASEA (Waukesha)
Serial Number: A6433
Gallons of Oil: 4570
Voltage: 69-13.8Kv
MVA: 12/16/20

Perform the Replacement of 3-69Kv bushings and Repair fo the UZD LTC on the above unit. The scope will include:

Base Bid:

- Pre-Order materials required. See below
- Mobilize crew and equipment to customer site.
- Verify disconnect and grounding of equipment by Customer.
- Pretest unit consisting of:
 - Bushing power factor and capacitance
 - Core megger
 - Transformer turns ratio
 - Insulation power factor
 - Insulation resistance
- Remove the 3-69Kv drawlead bushings. The transformer does not need to be drained.
- Cut existing drawleads and splice on new extended pigtails with new terminal. New Bushings are 9in taller than existing obsolete ones. Exterior connections modified by others if required.
- Install new Bushings and pull modified drawlead up thru bushing. New bushings provided by Waukesha.
- Perform a pressure leak test
- Investigate UZD LTC "Runaway" condition. Make adjustments as necessary to correct. **New parts/materials or labor to install not included.** 1 day onsite labor included.
- ~~Alternate 1~~ Adder: Supply and replace the existing BUE. See adder
 - Remove existing BUE and install new BUE (Preordered 10weeks shipment). 2 days additional time required and included in the adder.
- Demob from site.

Suggested Alternate 2 Added Scope; See adder

UZD LTC Upgrade Lease Kit

- Provide an LTC contact lease kit from Waukesha Components Division (HVS). The lease kit contains contacts and components that would normally need replacing. Customer is charged only for parts/components used from the kit and the Labor beyond 1 day to install. Waukesha will be responsible for coordinating, providing, and returning the kit and any unused parts to HVS.
- Drain/and store oil from Transformer and LTC. Vero Beach to provide storage barrels (2-55gl drums) and properly dispose of.
- Perform LTC Inspection
 - Check wear and alignment of all fixed contacts (main, reversing, transfer/diverter, slip, wedge)
 - Check wear and alignment of all moving contacts (main, reversing, transfer/diverter, roller)
 - Check all seals and gaskets on barrier board or phase moldings.
 - Replace any worn parts found during the inspection.
 - Operate LTC and verify proper mechanical timing and alignment on all taps.



- Provide and install replacement door gasket.
- Close and bolt LTC compartment door.
- Refill with oil through pump/filter. New oil can be provided for an additional charge. See below.
- Check for oil leaks and proper oil level.

Suggested Alternate 3 Adder

Mob to site to investigate "Runaway" Condition to determine if a new BUE is required.

2. Performance

Work is quoted upon Waukesha crews working 5 days a week, 8-12 hours per day. It is estimated that work scope will take See below days on site to complete depending upon weather conditions.

Start Date: TBD after delivery of Materials.

Base Bid: 2 days

Alternate 1: 2 additional days

Alternate 2: 1 additional day

Alternate 3: 1 day

Schedule of service crews and personnel is subject to prior sale.

3. Clarifications to Scope of Work

Unless specifically address in scope of work, the following assumptions have been made in preparation of our offer.

- Purchaser shall be responsible for switching, lock out, and grounding of any equipment necessary to establish safe work area.
- Purchaser shall provide suitable, free, clear, unlimited, and compacted access route, roads, and area around work location for access of service equipment.
- Purchaser shall disconnect and reconnect all external protection, control, and relay wiring, as required.
- ★ ● Purchaser shall disconnect and reconnect all external bushing terminations or bus work, as required.
- Purchaser shall disassemble and reassemble any deluge systems, as required.
- Waukesha will compile all crating and waste material in designated area; however, purchaser shall be responsible for disposal of solid wastes. Removed materials will be left onsite. Bushings, BUE (if applicable), LTC components.
- Purchaser shall provide drum and dispose of all waste, flush, and scrap oil generated in execution of work.
- Purchaser shall provide sanitation facilities.
- No provisions have been included for secondary oil containment as may be required for compliance to local site SPCC programs.
- Purchaser shall provide a PCB report showing PCB concentration of the unit within 90 days prior to start of scheduled work.
 - If PCB concentration is higher than 49 PPM, Waukesha will be unable to complete the work.
 - If PCB concentration is 1-49 PPM, an additional decontamination charge will be assessed. The proper disposal of the oil shall be the responsibility of the purchaser.
- When oil handling is part of work scope, Waukesha prefers to have a metals-in-oil screen done prior to start of job to detect any potential silicone contamination. In the event that silicone is discovered during the processing, additional charges will apply for addition of anti-foaming compounds and a decontamination fee after completion of job.



- Waukesha intends to utilize its own personnel and equipment, however, if scheduling conflict occurs; Waukesha reserves the right to hire subcontractors to assist with the work.

4. Schedule of Pricing

The pricing for the work scope as defined above is indicated below for performance by August 2011. Bid bond is included. A payment bond is included.

Base Bid: \$24,500.00

Alternate adder 1: \$24,200.00 Includes labor and the BUE

Alternate adder 2: \$3,500.00 labor only, Lease kit parts below

Alternate Price 3: \$4,275.00 Labor only

Materials:

Base Bid - 69Kv Bushings, gaskets, extended drawleads: Included 8-10 week shipment

Alt. Adder 1 - Complete BUE: Included 10 week shipment

Alt. Adder 2 - Complete UZD Lease Kit: \$9,861.00 2-3 week shipment. Total price if all parts used. See attached breakdown of parts. Billed only for parts used.

Surcharge Policy:

Recent volatility of oil prices create unpredictable changes in the cost of fuel for freight, power generation, powered equipment operation, and travel which are significant cost elements in providing the services detailed in this proposal. As a result, this order will be subject to a fuel surcharge that will be calculated and applied at time of invoicing based upon the Weekly Retail On-Highway Diesel prices as published by Energy Information Administration (<http://tonto.eia.doe.gov/ocg/info/wohdp/diesel.asp>). At the time of this quotation, the average retail on-highway diesel price is \$3.90/gallon.

If, at the time of invoicing, the average week retail price of on-highway diesel increases beyond this target price, a surcharge equal to 0.25% of the total invoice will apply for each \$0.05 increase in fuel price.

Unless specifically noted, prices do not include:

- Any site specific or customer required access and/or safety training beyond 1-2 hrs.
- Any special and/or site-specific safety, PPE, or environmental requirements.
- Use of union labor
- Local Sales or Use tax

Requested changes to work scope or delays outside the control of Waukesha shall be billed in accordance with Waukesha Price List.

5. Comments/Exceptions to Contract Documents

This Scope letter contains all comments and exceptions to contract documents..

6. Terms and Conditions Statement

Work shall be performed in accordance with Waukesha Electric Systems Terms and Conditions of Sale (Attached) or mutually agreed upon T&C's.

Payment terms and conditions are subject to credit approval.

Bid is valid for a period of 60 days.



7. Customer Acceptance

Waukesha has been requested to perform the above noted services. This work authorization, per subject terms & conditions provided with this document, forms the basis of contract with Waukesha Electric Systems, Inc.

Authorization/Purchase Order Number:

Date:

Billing Address:

Customer Signature:

Waukesha thanks you for the opportunity to provide a quotation for this work. We look forward to your consideration of this offering, and welcome any questions that you may have regarding this quotation for your service requirements.

Best Regards,

A handwritten signature in cursive script, appearing to read 'Ronald A. Yankum'.

Ronald A. Yankum
Regional Sales Associate – East Region



TERMS AND CONDITIONS OF SALE

1. ACCEPTANCE AND GOVERNING PROVISIONS. No orders shall be binding upon Seller until accepted in writing by an authorized representative of Seller at its headquarters office or factory. SELLER'S ACCEPTANCE OF BUYER'S ORDER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN (THE "TERMS") AND BUYER'S AGREEMENT TO BE BOUND BY AND COMPLY WITH THE TERMS. THESE TERMS, THE TERMS ON THE FACE OF THIS DOCUMENT, AND ALL REFERENCED ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER, AND NO AMENDMENT OR MODIFICATION SHALL BE BINDING ON SELLER UNLESS SIGNED BY AN OFFICER OF SELLER. THE FAILURE OF SELLER TO OBJECT TO PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT OF BUYER SHALL NOT BE CONSTRUED AS A WAIVER BY SELLER OF THE TERMS OR AN ACCEPTANCE OF ANY SUCH PROVISIONS. ANY CONFLICTING OR ADDITIONAL TERMS OR CONDITIONS SET FORTH BY BUYER IN A PURCHASE ORDER OR OTHER DOCUMENT ARE NOT BINDING UPON SELLER, AND SELLER HEREBY EXPRESSLY OBJECTS THERETO.

2. LIMITED WARRANTY. (a) For a period of one year from the date of delivery of goods or performance of services under Seller's proposal, Seller warrants, to the original purchaser, the goods manufactured by Seller to be free from defects in material and workmanship and the services performed by Seller to be in accordance with the specifications of Seller's proposal. (b) If within such period it shall be proven to Seller's reasonable satisfaction that any goods are defective or any services are nonconforming, such goods shall, at Seller's option, be repaired or replaced (F.O.B. Seller's factory, with all removal and installation to be at Buyer's expense) and such services corrected or a substitute obtained. (c) THE FOREGOING WARRANTIES STATE SELLER'S ENTIRE WARRANTY (EXCEPT TITLE) AND BUYER'S SOLE AND EXCLUSIVE REMEDY RELATED TO SUCH GOODS AND SERVICES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. (d) THIS WARRANTY SHALL NOT APPLY TO ANY LOSS OR DAMAGE RESULTING FROM: (i) NORMAL WEAR AND TEAR; (ii) ALTERATION, MISUSE, ABUSE, OR IMPROPER INSTALLATION, OPERATION OR MAINTENANCE BY BUYER OR A THIRD PARTY; (iii) ACCIDENT, FIRE, FLOOD, OR ACTS OF GOD; OR (iv) INACCURATE OR INCOMPLETE INFORMATION OR DATA SUPPLIED OR APPROVED BY BUYER. Buyer shall defend and indemnify Seller for any loss or damage of Seller arising out of (i) through (iv) above and any breach by Buyer of its covenants and obligations under the Terms.

3. PATENTS AND TRADEMARKS. (a) If notified promptly by Buyer in writing and provided with authority, information, and assistance, Seller shall defend or may at any time settle, at Seller's option, any suit or proceeding alleging that any goods designed and sold by Buyer pursuant to Seller's proposal infringe any United States patent or trademark. Seller shall pay any damages awarded in such suit or proceeding up to the amount of the depreciated purchase price of the goods. In the event any goods are held to constitute such infringement and the use of the goods is enjoined, Seller shall, at its option and expense: (i) procure for Buyer the right to continue using the goods; (ii) replace the goods with non-infringing goods; (iii) modify the goods so that they become non-infringing; or (iv) remove the goods and return the depreciated purchase price. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SELLER AND SOLE AND EXCLUSIVE REMEDY OF BUYER FOR PATENT OR TRADEMARK INFRINGEMENT RELATED TO THE GOODS. (b) NOTWITHSTANDING THE FOREGOING, SECTION (a) ABOVE SHALL NOT APPLY TO ANY SUIT OR PROCEEDING ALLEGING INFRINGEMENT RESULTING FROM OR RELATED TO SELLER'S COMPLIANCE WITH THE SPECIFICATIONS OR DESIGN OF BUYER OR THE USE OF GOODS OF SELLER IN COMBINATION WITH OTHER GOODS OR MATERIALS. Buyer shall defend and pay any damages awarded in such suit or proceeding.

4. DELIVERY AND DELAY. (a) Unless otherwise agreed to in writing signed by Seller: (i) goods shall be delivered F.O.B. point of shipment, with delivery to the initial carrier constituting delivery to Buyer; (ii) title to the goods and risk of damage or loss shall pass to Buyer upon delivery to the initial carrier; (iii) transportation costs shall be paid by Buyer; and (iv) Buyer shall have sole responsibility for filing any claims with any carrier for delay, loss or damage. (b) Dates of delivery or other performance are estimates and are based on timely receipt from Buyer of accurate and complete approved drawings and technical data. Seller shall not be liable for any delay beyond its reasonable control or caused by accident, bad weather, embargo, act of Buyer or third parties, labor disputes, national emergency, riots, non-delivery of suppliers, delays of carriers or delivery agents, inability to obtain labor, materials or manufacturing facilities, acts of God, or government restrictions, prohibitions or requirements. In the event of any such delay, Seller's time period for delivery or performance shall be extended accordingly. REGARDLESS OF THE CAUSE, SELLER SHALL HAVE NO LIABILITY FOR PENALTIES OF ANY NATURE AS A RESULT OF A DELAY. During any period of shortage due to the stated or similar causes, Seller may prorate its supply of material among its internal demand and its customers in whatever manner it chooses.

5. LIMITATION OF LIABILITY. (a) EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED UNDER SECTION 3 ABOVE, SELLER SHALL NOT BE LIABLE UNDER ANY THEORY OF RELIEF, INCLUDING, WITHOUT LIMITATION, BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OF OTHERWISE, ARISING OUT OF OR RELATED TO AN ORDER OR SELLER'S ACTS OR OMISSIONS, FOR: (i) INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, DAMAGE TO PROPERTY, OR LOSS OF USE; OR (ii) ANY DAMAGE OR LOSS IN EXCESS OF THE PURCHASE PRICE ACTUALLY PAID BY BUYER. (b) Any action by Buyer must be commenced within one year after the cause of action has accrued.



6. CHANGES, SUBSTITUTIONS, AND CANCELLATION. (a) Any changes requested by Buyer are not effective unless accepted in writing by an officer of Seller at Seller's corporate offices or factory. Any changes accepted by Seller which affect the specifications or scope of work of an order shall entitle Seller, as appropriate, to an adjustment to the price, delivery schedule, or other terms affected by such change. (b) Seller may furnish suitable substitutes for materials unobtainable due to regulations of governmental authorities or unavailability of materials from suppliers. Details of design and construction in any proposal are approximate and subject to revision by Seller. If changes in performance of services or in materials, design, layout or arrangement of goods are desired or required by conditions of which Seller was unaware or which were unforeseen by Seller, the price is subject to revision. (c) Buyer may cancel an order only with the written consent of Seller and upon payment of cancellation charges. In the event Seller accepts such cancellation or all or any part of the goods or services, Buyer shall be liable for the higher of: (i) 25% of the purchase price; or (ii) any loss incurred by Seller, including, without limitation, costs of engineering, reconditioning, labor, materials, and Seller's profit margin.

7. APPROVALS, INSPECTION AND ACCEPTANCE. (a) Buyer's approval, or failure to disapprove, of drawings submitted hereunder constitutes Buyer's acceptance of equipment design, specifications and other data contained therein. (b) Inspection of goods at our plant by Buyer, or Buyer's representatives, will be permitted insofar as such inspection does not interfere with Seller's production and provided that complete written details of such inspection are submitted to Seller ten (10) days in advance. (c) The goods and services shall be deemed accepted, and any claim of Buyer against Seller with respect to an order shall be waived and not enforceable, unless: (i) Buyer has promptly inspected the goods and services, and written notice from Buyer of any defect has been received by Seller within forty-eight (48) hours of rejection of any equipment inspected at Seller's factory or, if no factory inspection has taken place, within thirty (30) days following any delivery of goods or performance of services; and (ii) Seller has been given by Buyer reasonable advance notice and authorization to attend any tests designed to demonstrate that goods or services are defective, and the test conditions are mutually agreed to by Buyer and Seller. (d) Goods may not be returned without obtaining written authorization and shipping instructions from an authorized representative of Seller.

8. PRICES, PAYMENT AND CREDIT. (a) Unless other terms have been expressly stated by Seller in writing, Seller's prices: (i) are FOB point of shipment; (ii) do not include customs duties or any domestic or foreign sales, use, excise, or similar taxes under existing or future laws (with Buyer to be charged for same, unless Buyer has provided Seller with an appropriate tax exemption certificate); (iii) are valid for thirty (30) days from the proposal date; and (iv) do not include costs for installation of goods. All quoted prices are subject to correction for clerical errors. (b) Unless otherwise noted on the face hereof, the payment terms shall be net thirty (30) days from the date of shipment. Pro-rata payments shall become due with partial shipments of goods or partial delivery of services. Seller shall charge 1½% per month (or such lower percentage as required by applicable law) of the unpaid invoice balance, commencing thirty (30) days following the invoice date. Any delay in delivery or performance of an installment shall not relieve Buyer of its obligation to accept and make payment for remaining installments. If Buyer is notified by Seller that the goods are ready for shipment and there is an unreasonable delay in shipment for reasons beyond Seller's control (including Buyer's failure to provide shipping instructions), the date of completion shall be treated as the date of shipment for payment purposes, and completed goods shall be held at Buyer's risk of loss or damage, with Buyer paying all storage and insurance expenses. (c) Seller may, at its option, decline to deliver goods or provide services, except for cash, or stop goods in transit whenever, for any reason, Seller doubts Buyer's financial responsibility.

9. GOODS FOR EXPORT. If the ultimate destination of the goods is outside of the United States, Buyer shall designate such country on its purchase order. In the event that Buyer purchases goods for export without so notifying Seller, Buyer shall have sole liability and shall defend and indemnify Seller for any loss or damage (including without limitation, claims of governmental authorities) arising from the export from the United States or import into another country of such goods, including, without limitation, those related to packaging, labeling, marking, warranty, contents, use, or documentation of the goods. Seller shall have sole responsibility for obtaining any required export licenses. Buyer shall neither take, nor solicit Seller to take, any action which would violate any anti-boycott or any export or import statutes or regulations of the United States or other governmental authorities and shall defend and indemnify Seller for any loss or damage arising out of or related to such action.

10. PROPRIETARY INFORMATION. Seller retains title to all engineering and production prints, drawings, technical data, and other information and documents that relate to the goods and services sold to Buyer. Unless advised by Seller in writing to the contrary, all such information and documents disclosed or delivered by Seller to Buyer are to be deemed proprietary to Seller and shall be used by Buyer solely for the purpose of inspection, installation, and maintenance and not used by Buyer for any other purpose.

11. MISCELLANEOUS. All rights and remedies of Seller under these Terms are in addition to its rights at law and in equity. Any delegation or assignment by Buyer of any of its responsibilities or rights without Seller's prior written consent shall be void. The validity, performance, and interpretation of this document and any referenced attachment thereto shall be governed by the law of the state where Seller's factory is located. The invalidity or illegality of any provision of the Terms shall not render invalid or illegal any other provision therein. Seller's failure at any time to require performance by Buyer of any of the Terms shall not serve as a waiver or diminish Seller's right to demand strict compliance with such provision or with other of the Terms. WES SS&C Terms & Conditions of Sale 031502.doc



Waukesha Electric Systems, Inc.

PO Box 286
2701 US Highway 117 South
Goldsboro, NC 27530
Tel: 919-734-8900 • Fax: 919-581-1675
Customer Service: 800-365-2497

TECHNICAL SPECIALIST SERVICES

Waukesha maintains a significant staff of trained field engineers and technicians who are available to provide advisory assistance, installation, inspection, commissioning, testing, troubleshooting, start up, engineering studies, maintenance and repair services of electrical apparatus.

Technical Specialists are classified in two categories dependent upon the degree of expertise and complexity of the service required.

Service Engineer

The service engineer has specialized educational training along with factory training and experience in design, assembly, installation, or testing. This specialist is required for special diagnosis, repairs, inspection, failure analysis, and engineering evaluations.

Service Technician

The service technician has specialized factory training and experience. This specialist can act as a consultant for customer's personnel with respect to correct installation, testing, maintenance, or service requirements consistent with Waukesha guidelines.

Specialist Rates

Classification	Daily Rate	Daily Rate With per Diem	Hourly Overtime Rate	Hourly Sunday & Holiday Rate
Service Engineer	\$1200	\$1425	\$225	\$300
Service Technician	\$960	\$1225	\$180	\$240

Daily rate applies to all time worked or traveled during a normal eight hour workday. The shift is defined as any consecutive eight-hour period (Monday-Friday, holidays excluded) with an allowance for lunch.

Overtime rate applies to all hours worked in excess of eight hours on weekdays and all time worked or traveled on Saturdays.

Sunday and Holiday rate applies to all hours work or traveled on Sundays or holidays.

Hourly and daily rates are exclusive of all travel and living costs.

Charges for travel and living expenses will be billed at cost plus an 18% handling charge.

Per Diem

Where purchasers specify or require daily rates for field services inclusive of local traveling and living expenses, a flat charge will be billed for all time worked or traveled per eight hour weekday or fraction thereof (Monday through Friday). All hours worked or traveled in excess of eight hours per weekday and all hours on Saturdays, Sundays, and holidays will be billed at the applicable hourly overtime rates. Per Diem rates exclude the cost of airfare to/from the job site and headquarters.

Traveling Time

The maximum billing for traveling time, at the applicable rate, shall be eight hours per specialist for any one-calendar day.

Traveling time and expenses for each specialist will include leaving and returning to the employee's headquarters.

Minimum Billing

A minimum billing for one day's service will be charged for each day or fraction thereof that a Technical Specialist spends on the customer's premises.

Standby Time

When Technical Specialists are on the customer's premises but are unable to perform the services requested because of circumstances beyond the control of Waukesha, the purchaser will be charged at the applicable rate.



Waukesha Electric Systems, Inc.

PO Box 286
2701 US Highway 117 South
Goldsboro, NC 27530
Tel: 919-734-8900 • Fax: 919-581-1675
Customer Service: 800-365-2497

OTHER CHARGES

The following charges will be in addition to the service rates stated previously:

A. Expendable Small Tools

When a particular job requires the furnishing of small expendable tools not normally carried by the Technical Specialist, a charge for such tools will be billed at the cost of acquisition.

B. Material Furnished by Waukesha

All WESS material used on the job will be billed at current prices.

C. Material Purchased from Subcontractors or Other Vendors

When the job requires the purchase of materials or services from subcontractors or other vendors, such items will be billed at cost plus 18% handling charge.

D. Special Tools and Equipment Furnished by Waukesha

A rental charge shall be made for all specialized tools, equipment, and instruments. Refer to Waukesha Inc. Field Service Equipment Rental Rate Sheet.

E. Company Vehicle Mileage Rate

The cost of mileage for standard company vehicles to travel to and from the standard job site will be billed at a rate of \$0.65 per mile. Any vehicle requiring a CDL endorsement to drive shall be billed at a rate of \$1.85 per mile for travel to and from the job site.

PRODUCT WARRANTY WORK

Product warranty work on Waukesha supplied equipment will be performed F.O.B. factory or at the customer's site, at Waukesha's option. Work at the customer's site will be accomplished during a normal eight hour straight time day. If the purchaser requests that product warranty work be performed during any other time period, purchaser will be invoiced for the premium time portion of the work, i.e., the difference between the applicable rate and the overtime rate for the services performed.

TERMS OF PAYMENT

Net 30 days from date of invoice

TERMS AND CONDITIONS

See Waukesha Electric Systems Terms and Conditions of Sale.

BILL OF MATERIALS / PRICE LIST

12/20/2010

DESCRIPTION: CONTACT KIT (OEM DESIGN)
 EQUIPMENT TYPE: WAUKESHA UZD CONTACT KIT
 HVS PART NUMBER 1030-021K-V1

	<u>EACH</u>	<u>PART DESCRIPTION</u>	<u>EACH PRICE</u>	<u>EXTENDED</u>
1	3	MAIN CONTACT ARMS W/ ROLLERS	\$818.00	\$2,454.00
		HVS P/N 1030-027K-OEM-V1		
3	1	BRAKE ASSEMBLY KIT W/ ROLLERS	\$163.00	\$163.00
		HVS P/N 1030-042K-V1		
4	54	STATIONARY CONTACT ASSEMBLY	\$58.00	\$3,132.00
		HVS P/N 1030-052P		
5	108	STEEL SCREW CAP M5X.8 16MM LG	\$0.90	\$97.20
		HVS P/N 8010-099-509		
6	108	LOCK WASHER S.S. M5	\$0.90	\$97.20
		HVS P/N 8010-198-06		
7	1	LOCTITE	\$2.40	\$2.40
		HVS P/N 1030-460		
8	1	GLUE	\$35.00	\$35.00
		HVS P/N 1030-375		
9	1	O-RING (NEW DESIGN)	\$38.00	\$38.00
		HVS P/N 1030-461		
10	1	O-RING (OLD DESIGN)	\$286.50	\$286.50
		HVS P/N 1030-475		
11	3	BOW TIE CONTACT TUBE KIT	\$232.00	\$696.00
		HVS P/N 1030-025K-V1		
12	2	NYLON COLLAR (BRAKE ROLLER)	\$8.80	\$17.60
		HVS P/N 1030-470		
13	2	COTTER PINS S.S. M2	\$1.00	\$2.00
		HVS P/N 8010-200-103		
14	1	GREASE	\$2.00	\$2.00
		HVS P/N 1030-472		
16	1	CONTACT ARM SUB-ASSEMBLY	\$818.00	\$818.00
		HVS P/N 1030-1730K-V2		
18	6	SCREW, HEX HEAD S.S. M10X1.5 20MM LONG	\$2.10	\$12.60
		HVS P/N 8010-199-811		
19	6	BELLEVILLE WASHER	\$2.10	\$12.60
		HVS P/N 8010-101-26		
20	1	REVERSING SWITHC UP-GRADE KIT	\$1,995.00	\$1,995.00
		HVS P/N 1030-017K-V1		
			TOTAL	\$9,861.10

CORPORATE INFORMATION SUMMARY FOR WAUKESHA ELECTRIC SYSTEMS, INC.

Corporate Name: **Waukesha Electric Systems, Inc.**

Trade name: **Waukesha Electric Systems**

State and Date of Incorporation: **Wisconsin corporation**
Originally incorporated under a prior name on January 21, 1970, in Wisconsin.

Shareholder: **Wholly owned subsidiary of SPX Corporation, a Delaware corporation.**

Principal Place of Business: **400 South Prairie Avenue**
Waukesha, WI 53186

Registered Office: **CT Corporation System**
8025 Excelsior Drive, Suite 200
Madison, WI 53717

Taxpayer Identification Number (TIN or FEIN): **39-1139625**

	<u>Name</u>	<u>Title</u>
Principal Officers:	Thomas J. Farrell	President
	William R. Hegeman	Vice President, Finance and Assistant Secretary
	Laurie Smaglick Johnson	Vice President, Marketing and Sales
	David Goodwill	Vice President, Human Resources
	Trent Spear	Vice President Business Development
	Mark Kruger	Vice President, General Manager – Waukesha South and Assistant Secretary
	H. Jin Sim	Vice President, Technology
	John F. Porter	Vice President, Operations
	Scott J. Rieckhoff	Assistant Secretary

MEMORANDUM OF INSURANCE

DATE OF ISSUE: 01/01/11

PRODUCER:
 AON RISK SERVICES CENTRAL, INC.
 Grand Rapids, MI Office
 171 Monroe Avenue N W – Suite 525
 Grand Rapids, MI 49503
 CONTACT: Joy Teitsma PHONE: (877) 266-1043

COMPANIES AFFORDING COVERAGE

COMPANY LETTER	A	ACE American Insurance Company
COMPANY LETTER	B	Indemnity Insurance Co. of North America
COMPANY LETTER	C	
COMPANY LETTER	D	
COMPANY LETTER	E	

INSURED:
 Waukesha Electric Systems, Inc.
 SPX Corporation
 13515 Ballantyne Corporate Place
 Charlotte NC 28277 USA

COVERAGES

This memorandum verifies that the following coverages are in force: Commercial General Liability including Products Liability, Automobile Liability and Workers' Compensation/Employer's Liability.

This memorandum is furnished to you as a matter of information for your convenience. It is not intended to reflect all the terms and conditions or exclusions of such policies. This memorandum is not an insurance policy and does not amend, alter, or extend the coverage afforded by the listed policies. The insurance afforded by the listed policy is subject to all the terms, exclusions and conditions of such policies.

CO LTR	TYPE OF INSURANCE <input checked="" type="checkbox"/>	POLICY NUMBER	EFF. DATE	EXP. DATE	LIMITS SHOWN ARE AS REQUESTED	
A	COMMERCIAL GENERAL LIABILITY	XSLG25526053	1/1/11	1/1/12	GENERAL AGGREGATE	\$ 25,000,000
	<input checked="" type="checkbox"/> COM GEN LIABILITY				PRODUCTS-COMP/OP AGG	\$ 10,000,000
	<input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 5,000,000
	OWN & CONT PROT				EACH OCCURRENCE	\$ 5,000,000
	<input checked="" type="checkbox"/> Contractual Liability				FIRE DAMAGE (Any fire)	\$ 5,000,000
					MED EXPENSE (Any one person)	\$ 25,000
A	AUTOMOBILE LIABILITY	ISAH08633046	1/1/11	1/1/12	COMBINED SINGLE LIMIT	\$ 2,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per Person)	\$
	ALL OWNED AUTOS				BODILY INJURY (Per Accident)	\$
	SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY					
	SELF-INSURED					
	PHYSICAL DAMAGE					
	EXCESS LIABILITY					
	<input type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE	\$
	<input type="checkbox"/> OTHER THAN UMB				AGGREGATE	\$
A B	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	WLR4647031A WLR46470308 SCFC46470321 WCUC46470345	1/1/11 For all WC/EL policies	1/1/12 For all WC/EL policies	<input checked="" type="checkbox"/> STATUTORY LIMITS	\$
					EACH ACCIDENT	\$ 1,000,000
					DISEASE-POLICY LIMIT	\$ 1,000,000
					DISEASE-EACH EMPLOYEE	\$ 1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Limits of Liability shown for General Liability policy XSLG25526053 are in excess of a Self Insured Retention of \$250,000 per occurrence.

Limits of Liability shown for Workers' Compensation policy #WCUC46470345 are in excess of a Self Insured Retention of \$1,000,000 per occurrence.

BID

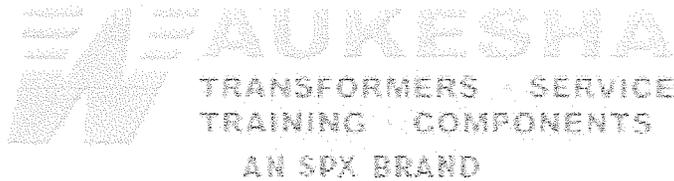
City of Vero Beach

Bid No. 110-11/PJM

Substation #10 Load Tap Changer Drive
Mechanism Repair and Replacement of 69Kv
Top-Mount Bushings

Bid April 5, 2011
3:00pm

Submitted by: Waukesha Electric Systems
Goldsboro, NC
Ron Yankum
207-622-3402



Ron Yankum
72 Purinton Ave
Augusta, ME 04330
207-622-3402 office
207-522-5778 cell
1-866-838-4368 fax

[Handwritten signature]

April 5, 2011

City of Vero Beach
3455 Airport West Drive
Vero Beach, FL 32960
Attn: Manager of Purchasing

Subject: Bid No. 110-11/PJM Substation #10 Load Tap Changer Drive Mechanism and Replacement of 69Kv Top-Mount Bushings

Dear Manager of Purchasing,

Thank you for the opportunity to provide The City of Vero Beach with this quotation for the above named project. Waukesha Electric Systems is pleased to offer the following proposal for all of the work detailed in the Bid. This proposal contains all the required information requested by The City of Vero Beach.

We acknowledge that a Pre-Bid meeting was held and 2 addendums has been issued for this project. Waukesha is in complete understanding of the Bid. Please review the scope letter attached in reference to our detailed scope, expectations of the customer and other comments to the commercial and technical aspects of the Bid. Any and all exceptions and/or clarifications will be contained in this letter along with any referenced documents.

The following pages include the remaining information required for this Bid. Please contact me if you have any questions regarding this quotation.

Sincerely,

Ronald A. Yankum
Regional Sales Associates
Waukesha Electric Systems, Inc.

CC: Perry Webster Electric Sales Associates
CC: Steve Chicki Waukesha
CC: Tommy Walters Waukesha

March 21, 2011

COVER BID 110-10/PJW
ADDENDUM NO. 1
TO
CITY OF VERO BEACH BID
SUBSTATION #10 LOAD TAP CHANGER DRIVE MECHANISM REPAIR
AND REPLACEMENT OF 69KV TOP-MOUNT BUSHINGS

The following ADDENDUM is hereby made a part of the specifications for a SUBSTATION #10 LOAD TAP CHANGER DRIVE MECHANISM REPAIR AND REPLACEMENT OF 69KV TOP-MOUNT BUSHINGS as identified above, and shall be considered a part thereof for all purposes, superseding and replacing anything to the contrary in the original specifications.

CHANGE OF DUE DATE:

NEW DUE DATE: TUESDAY, MARCH 29TH 2011 @ 3:00 P.M.

ALL ADDENDA MUST BE SIGNED BY THE BIDDER AND INCLUDED WITH THE BIDDING DOCUMENTS IN ORDER FOR BID TO BE CONSIDERED.

Wintresh Electric Systems, Inc
Company Name


Signature

ADDENDUM NO. 1

March 29, 2011

COVB BID 110-10/PJW
ADDENDUM NO. 2
TO
CITY OF VERO BEACH BID
SUBSTATION #10 LOAD TAP CHANGER DRIVE MECHANISM REPAIR
AND REPLACEMENT OF 69KV TOP-MOUNT BUSHINGS

The following ADDENDUM is hereby made a part of the specifications for a SUBSTATION #10 LOAD TAP CHANGER DRIVE MECHANISM REPAIR AND REPLACEMENT OF 69KV TOP-MOUNT BUSHINGS as identified above, and shall be considered a part thereof for all purposes, superceding and replacing anything to the contrary in the original specifications.

CHANGE OF DUE DATE:

NEW DUE DATE: TUESDAY, APRIL 5TH 2011 @ 2:30 P.M.

ADDITIONAL INFORMATION:

TRANSFORMER DRAWING ATTACHED

ALL ADDENDA MUST BE SIGNED BY THE BIDDER AND INCLUDED WITH THE BIDDING DOCUMENTS IN ORDER FOR BID TO BE CONSIDERED.

Waukesha Electric Systems, Inc
Company Name


Signature

ADDENDUM NO. 2

BID

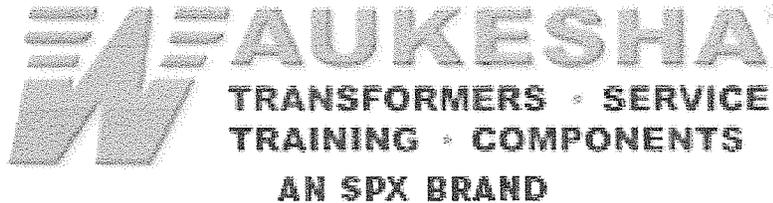
City of Vero Beach

Bid No. 110-11/PJM

Substation #10 Load Tap Changer Drive
Mechanism Repair and Replacement of 69Kv
Top-Mount Bushings

Bid March 29, 2011
3:00pm

Submitted by: Waukesha Electric Systems
Goldsboro, NC
Ron Yankum
207-622-3402



Ron Yankum
72 Purinton Ave
Augusta, ME 04330
207-622-3402 office
207-522-5778 cell
1-866-838-4368 fax

ron.yankum@spx.com

March 29, 2011

City of Vero Beach
3455 Airport West Drive
Vero Beach, FL 32960
Attn: Manager of Purchasing

Subject: Bid No. 110-11/PJM Substation #10 Load Tap Changer Drive Mechanism and Replacement of 69Kv Top-Mount Bushings

Dear Manager of Purchasing,

Thank you for the opportunity to provide The City of Vero Beach with this quotation for the above named project. Waukesha Electric Systems is pleased to offer the following proposal for all of the work detailed in the Bid. This proposal contains all the required information requested by The City of Vero Beach.

We acknowledge that a Pre-Bid meeting was held and 1 addendum has been issued for this project. Waukesha is in complete understanding of the Bid. Please review the scope letter attached in reference to our detailed scope, expectations of the customer and other comments to the commercial and technical aspects of the Bid. Any and all exceptions and/or clarifications will be contained in this letter along with any referenced documents.

The following pages include the remaining information required for this Bid. Please contact me if you have any questions regarding this quotation.

Sincerely,

Ronald A. Yankum
Regional Sales Associates
Waukesha Electric Systems, Inc.

CC: Perry Webster Electric Sales Associates
CC: Steve Chicki Waukesha
CC: Tommy Walters Waukesha

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we Waukesha Electric Systems, Inc.

(hereinafter called Principal)

and Liberty Mutual Insurance Company (hereinafter called the Surety), with its principal offices in the City of Boston, MA and authorized to do business in the State of Florida, are held and firmly bound unto City of Vero Beach as Obligee, hereinafter called the Obligee, in the sum of Five Percent (5%) of the Attached Bid Dollars (\$-----5%-----) for the payment of which sum will and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to submit or has submitted a Bid for:
Substation #10 Load Tap Changer Drive Mechanism Repair
and Replacement of 69 KV Top-Mount Bushings and.

WHEREAS, the Principal desires to file this Bond in accordance with law, in lieu of a Certified or Cashier's Check otherwise required to accompany this Bid,

NOW, THEREFORE, if the Obligee shall accept the Bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such Bid, and give such Bond or Bonds as may be specified in the Bidding or Contract Documents with good and sufficient Surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such Bond or Bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said Bid and such larger amount for which the Obligee may in good faith Contract with another party to perform the Work covered by said Bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

SIGNED AND SEALED this 23rd day of March, 2011.

Waukesha Electric Systems, Inc.
Principal Seal

Lidia H. Myszczek
Witness

Kevin L. Lilly
Title Kevin L. Lilly
vice president & Secretary

Julie Demman
Witness

Liberty Mutual Insurance Company
Surety Seal
Paulette A. Perette
Title Attorney-in-Fact

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint

DREW BRACH, BRIAN COOK, LORETTA A. PERETTI, JULIE DENMAN, ALL OF THE CITY OF GRAND RAPIDS, STATE OF MICHIGAN

each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWO HUNDRED FIFTY MILLION AND 00/100 DOLLARS (\$ 250,000,000.00) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 2nd day of December, 2010.

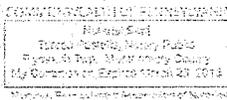
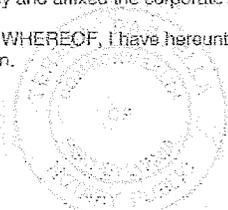
LIBERTY MUTUAL INSURANCE COMPANY

By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 2nd day of December, 2010, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 23RD day of MARCH, 2011.

By David M. Caroy
David M. Caroy, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

Notary Acknowledgement of Surety

State of Michigan }
County of Kent } ss:

On **March 23, 2011**, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared **Loretta A. Peretti**

known to me to be Attorney-in-Fact of **Liberty Mutual Insurance Company** the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires December 6, 2017


Julie Denman, Notary Public

IDENTICAL TIE BIDS

Preference shall be given to business with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or Contractual services, a Bid received from a business that certifies that it has implemented a drug-free Workplace program shall be given preference in the award process. Established procedures for processing tie Bids will be followed if none of the tied vendors has a drug-free Workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or Contractual services that are under Bid a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or Contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any State for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employer's community by, any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section. As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.



VENDOR'S SIGNATURE

BID PROPOSAL

INVITATION TO BID NO: 110-11/PJW

To: The City Manager
City of Vero Beach
P.O. Box 1389
Vero Beach, Florida 32961

The Undersigned Bidder has carefully examined the Contract Documents and any and all Work Sites. The undersigned is familiar with the nature and extent of the Work and any local conditions that may in any manner affect the Work to be done, and the equipment, materials and labor required.

The undersigned agrees to do all the Work in accordance with the Contract Documents and according to the standards of quality and performance established by the City, for the unit prices as provided in the attached Bid Schedule, for each of the items or combination of items stipulated. It is understood that certain quantities shown in the Bid Schedule are approximate only, subject to increases and decreases, and for the purpose of Bid comparisons for determination of low Bidder. It is further understood that payment will be in accordance with actual quantities placed in the construction as more specifically provided in the Contract Documents. The undersigned further agrees as follows:

1. To do any Work, not covered by the Bid Schedule, which may be ordered by the City upon authorization by the City Council, and to accept as full compensation therefore such prices as may be agreed upon, in writing, by the City and the Contractor in accordance with Articles 8-9, of the General Conditions.
2. To begin and complete Work as required in the Notice to Proceed.
3. To reimburse the City of Vero Beach liquidated damages in the amount and under the conditions specified in the Contract Documents.
4. To insert in all Contracts at every tier the notice stated in Article 16 of the Instructions to Bidders.

Dated this 29th day of March, 2011.

Respectfully submitted

Waukesha Electric Systems, Inc

Bidder

2701 US Highway 117 south

Address

Goldsboro, NC 27530

City, State and Zip Code

**CITY OF VERO BEACH
BID SCHEDULE
ELECTRICAL TRANSMISSION & DISTRIBUTION
SUBSTATION #10 TRANSFORMER LOAD TAP CHANGER REPAIR AND
69Kv BUSHING REPLACEMENT
BID #110-11 /PJW**

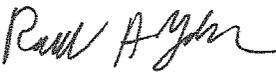
Furnish all equipment, labor, supervision, materials, transportation and services for repair of RTE/ASEA Transformer Load Tap Changer and replacement of three (3) 69kV Bushings located at the City of Vero Beach's Substation #10 per specifications provided.

Base Bid: \$24,500.00 Alt Adder 1: \$24,200.00 Alt. Adder 2: \$3,500.00 Alt. adder 3: \$4,275.00

Base only: Twenty Four Thousand, Five Hundred Dollars
Written Amount
Numeric Amount

TIME OF COMPLETION

Total number of calendar days from and including Commencement Date through Completion. Date required to complete the Work in accordance with the Contract Documents. The Time of Completion, however, shall not exceed 6-7 days calendar days.

Firm Name Waukesha Electric Systems, Inc
Address: 2701 US Highway 117 South
City Goldsboro & State: NC 27530
Telephone: 207-622-3402 Fax: 866-838-4368 E-Mail: ron.yankum@spx.com
Terms: See attached scope document
Name, Typed or Printed: Ronald A. Yankum
Signature: 
Title: Regional Sales Associate

10. Minority Business Statement:

Is your firm a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985? YES or NO

11. State the true, exact, correct, and complete name of the partnership, corporation, limited liability company, or trade name under which you do business, and the address of the place of business. (If a partnership, state the name of all partners. If a corporation, state the name of the President and Secretary. If a Limited Liability Company, state the names of all members. If a trade name, state the names of the individuals who do business under the trade name.)

Waukesha Electric Systems, Inc

(Correct Name of Bidder)

a. The business is a Sole Proprietorship, Partnership, Corporation, or Limited Liability Company.

A Corporation

b. The address and phone number of principal place of business is

400 So. Prairie Ave, Waukesha, WI 53186

c. The names of the partners, corporate officers, members, or individuals doing business under a trade name, are as follows:

Thom Farrell - Pres

Patrick O'Leary - VP

Michael Reilly - Treasurer

Waukesha Electric

(Bidder)

QUESTIONNAIRE

The undersigned guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business as a supplier of these materials/services?

40 yrs

2. What is the last project of this nature that you have completed?

Timken Corp- BUE replacement/maintenance July 2010

3. Have you ever failed to complete Work awarded to you; if so, where and why?

No

4. Name three (3) individuals or corporations for which you have performed Work of this size and nature to which you refer:

A & N Elec. Coop	Phone	Kelvin Pettit 757-710-2290
Kissamee Utility Auth		Mike Simpson 407-933-777 ext 1211
	Phone	
Florida Keys Elec		Robert Blank 305-522-0001
3	Phone	

5. Have you personally inspected the proposed Work and have you a complete plan for its performance?

No site visit was made but we have performed this type of work numerous times.

6. Will you sublet any part of this Work? If so, give details:

No

7. What equipment do you own that is available for the Work?

Tool Van, Specialty UZD tools, Oil Processor

8. What equipment will you purchase for the proposed Work?

Except for replacement materials(BUE & Bushings) None

9. What equipment will you rent for the proposed Work?

Possibly a small crane for lifting the bushings.



Waukesha Electric Systems, Inc.
 PO Box 286
 2701 US Highway 117 South
 Goldsboro, NC 27530
 Tel: 919-734-8900 • Fax: 919-581-1675
 Customer Service: 800-365-2497

QUOTATION

DATE:	March 29, 2011
TO:	City of Vero Beach
CC:	Perry Webster ESA Steve Chicki Waukesha Service Tommy Walters Waukesha Service
RE:	Bid No. 110-11/PJM Substation #10 Load Tap Changer Drive Mechanism Repair and Replacement of 69Kv Top-Mount Bushings
Submitted By:	Ron Yankum Regional Sales Associate – East Region Waukesha Electric Systems, Inc. 207-622-3402 office 207-522-5778 cell 866-838-4368 fax Ron.Yankum@spx.com
Waukesha Quotation Number:	GSS 9115587

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TECHNICAL SPECIALIST SERVICES.....	ERROR! BOOKMARK NOT DEFINED.

Confidentiality Notice:

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20-4)



City Council Agenda Item

Meeting of May 3, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager *MK Falls*
4/26/11

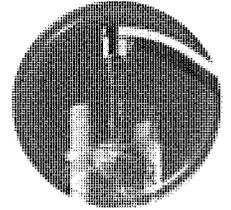
DATE: April 26, 2011

SUBJECT: **Wastewater Treatment Plant Clarifier Rehabilitation
Recommendation of Final Acceptance and Payment
City of Vero Beach Project No. WS07011 (Bid No. 070-07/JV)**

REQUESTED BY: Water and Sewer Director

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

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



DEPARTMENTAL CORRESPONDENCE
WATER AND SEWER DEPARTMENT

To: Monte K. Falls, Interim City Manager
From: Robert J. Bolton, P.E., Director *RJB*
Date: April 25, 2011
RE: **Wastewater Treatment Plant Clarifier Rehabilitation
Recommendation of Final Acceptance and Payment
City of Vero Beach Project No. WS07011 (Bid No. 070-07/JV)**



Recommendation:

- Place this item on the City Council's Agenda for May 3, 2011;
- Accept this project as follows:

Approve Pay Estimate No. 17 and Final in the amount of \$74,833.95.

Funding:

This project is funded via account number 423.9000.536.611380.

Background:

The existing clarifiers at the Wastewater Treatment Plant have been in operation since 1975. The clarifiers consist of concrete tanks with interior steel equipment. The steel equipment deteriorated over the years. In addition, the concrete walkways on top of the tanks have experienced cracking and spalling which undermined the steel reinforcement.

The City Council, at their meeting of September 4, 2007, awarded the referenced contract to Interstate Engineering Corp. in the amount of \$1,447,000.00. There was one change order for increased sandblasting and painting on the interior of both clarifiers which resulted in a project increase of \$49,679.02. Therefore, the revised total project cost is \$1,496,679.02.

The project commenced on November 15, 2007 and was substantially completed on November 15, 2010. To the best of our knowledge and belief this project was constructed in accordance with the contract requirements.

We have reviewed the as-built quantities and confirm that \$1,496,679.02 represents the total amount of work completed. Therefore, we recommend final payment in the amount of \$74,833.95.

Attached please find one (1) copy of Final Pay Application No. 17. Copies of Final Releases from the contractor, subcontractors and suppliers are also attached.

RJB/srp
Attachments

xc: Steve Maillet, Finance Director, w/attachments
Jackie Mitts, Assistant Finance Director
John O'Brien, Purchasing Manager
Robert A. Cook, P.E., Project Manager, Interstate Engineering Corp.

CITY OF VERO BEACH WATER & SEWER DEPARTMENT
 WWTP CLARIFIER REHABILITATION

DATE: April 1, 2011
 PAY ESTIMATE NO.: Seventeen
 CONTRACTOR: Interstate Engineering Corporation
 FOR PERIOD ENDING: March 23, 2011

PROJECT NO.: WS07011
 CONTRACT NO.: 070-07JV
 ACCOUNT NO.: 423.9000.536.611380

ORIGINAL CONTRACT AMOUNT: \$1,447,000.00
 ADDITIONS TO CONTRACT: \$54,179.02
 DEDUCTIONS FROM CONTRACT: -\$4,500.00
 CONTRACT AMOUNT TO DATE: \$1,496,679.02

TOTAL EARNED TO DATE: \$1,496,679.02
 RETAINAGE: 0.00% \$0.00
 TOTAL LESS RETAINAGE: \$1,496,679.02
 PREVIOUS PAYMENTS: \$1,421,845.07
 AMOUNT DUE THIS ESTIMATE: \$74,833.95

Summary - Amounts Paid To Date

Mobilization, Bonds, Insurance \$45,000.00
 General Conditions \$56,800.00
 Clarifier No. 1 \$672,600.00
 Inside blast & paint \$17,612.46
 Hydroblast Credit -\$4,500.00
 Relocate Light Pole, Provide Support \$779.06
 Clarifier No. 2 \$672,600.00
 Inside blast & paint \$17,612.46
 Relocate Light Pole, Provide Support \$779.06
 Replace Influent 90 Deg. Bend and Pipe \$4,563.99
 Replace, Paint 24" Pipe Between Clarifiers \$12,832.00
 Totals \$1,496,679.02

The City Of Vero Beach


 Prepared By: Jeffrey A. Gilbert, P.E.
 Utility Engineer II

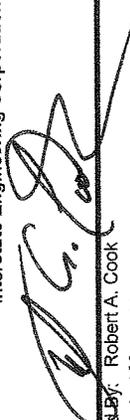
3-35-11
 Date:


 Approved By: Robert J. Bolton, P.E.
 Director, Water & Sewer Dept.

Date:

4/15/11

Interstate Engineering Corporation


 Accepted By: Robert A. Cook
 Project Manager

Date:

3/21/11

WASTEWATER TREATMENT PLANT CLARIFIER REHABILITATION
SCHEDULE OF VALUES

DATE: April 1, 2011

Seventeen

PAY ESTIMATE NO.:

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Previous Period Quantity	Previous Period Earned	Quantity This Period		This Period Total	This Period Earned	Total To Date Quantity	Total To Date Earned	Percent Complete
							Work In Place	Materials Stored					
1	Bonds	1.00	LS	\$17,200.00	1	\$17,200.00			0.00	\$0.00	1	\$17,200.00	100.00%
2	Insurance	1.00	LS	\$12,500.00	1	\$12,500.00			0.00	\$0.00	1	\$12,500.00	100.00%
3	Mobilization	1.00	LS	\$15,300.00	1	\$15,300.00			0.00	\$0.00	1	\$15,300.00	100.00%
	Subtotal			\$45,000.00		\$45,000.00				\$0.00		\$45,000.00	
	Project Requirements								0.000000				
4	General Conditions	1.00	LS	\$52,000.00	1.00	\$52,000.00			0.00	\$0.00	1	\$52,000.00	100.00%
5	Excavation	1.00	LS	\$4,000.00	1	\$4,000.00			0.00	\$0.00	1	\$4,000.00	100.00%
6	Sodding	1.00	LS	\$800.00	1	\$800.00			0.00	\$0.00	1	\$800.00	100.00%
	Subtotal			\$56,800.00		\$56,800.00				\$0.00		\$56,800.00	
	Clarifier 1												
7	Demolition												
a	Removal of sludge collection & assoc. elec	1.00	LS	\$1,500.00	1	\$1,500.00			0.00	\$0.00	1	\$1,500.00	100.00%
b	Removal of effluent troughs, weirs, baffles	1.00	LS	\$1,800.00	1	\$1,800.00			0.00	\$0.00	1	\$1,800.00	100.00%
c	Removal of plant water & chem piping	1.00	LS	\$900.00	1	\$900.00			0.00	\$0.00	1	\$900.00	100.00%
d	Removal of lighting, wiring & conduit	1.00	LS	\$600.00	1	\$600.00			0.00	\$0.00	1	\$600.00	100.00%
e	Removal of coating system on interior	1.00	LS	\$3,000.00	1	\$3,000.00			0.00	\$0.00	1	\$3,000.00	100.00%
f	Removal of concrete walkways, handrails	1.00	LS	\$35,000.00	1	\$35,000.00			0.00	\$0.00	1	\$35,000.00	100.00%
g	Removal of grout layer on floor of clarifiers	1.00	LS	\$4,500.00	1	\$4,500.00			0.00	\$0.00	1	\$4,500.00	100.00%
	Concrete												
8	Concrete												
a	Walkway Concrete	1.00	LS	\$15,000.00	1	\$15,000.00			0.00	\$0.00	1	\$15,000.00	100.00%
b	Grout on bottom	1.00	LS	\$17,000.00	1	\$17,000.00			0.00	\$0.00	1	\$17,000.00	100.00%
c	Walkway Formwork/Rebar	1.00	LS	\$45,000.00	1	\$45,000.00			0.00	\$0.00	1	\$45,000.00	100.00%
d	Formwork supports 200	1.00	LS	\$45,000.00	1	\$45,000.00			0.00	\$0.00	1	\$45,000.00	100.00%
	Painting												
9	Painting												
a	Sandblast interior of clarifier	1.00	LS	\$2,000.00	1	\$2,000.00			0.00	\$0.00	1	\$2,000.00	100.00%
b	Hydroblast exterior of clarifier	1.00	LS	\$9,000.00	1	\$9,000.00			0.00	\$0.00	1	\$9,000.00	100.00%
c	Paint interior wall of Clarifier	1.00	LS	\$10,000.00	1	\$10,000.00			0.00	\$0.00	1	\$10,000.00	100.00%
d	Paint exterior wall of Clarifier	1.00	LS	\$12,000.00	0	\$0.00	1		1.00	\$12,000.00	1	\$12,000.00	100.00%
e	Paint clarifier mechanism	1.00	LS	\$18,000.00	1	\$18,000.00			0.00	\$0.00	1	\$18,000.00	100.00%
f	Paint piping	1.00	LS	\$6,000.00	1	\$6,000.00			0.00	\$0.00	1	\$6,000.00	100.00%
	Handrails												
10	Handrails												
a	Handrail materials	1.00	LS	\$19,000.00	1	\$19,000.00			0.00	\$0.00	1	\$19,000.00	100.00%
b	Handrail installation	1.00	LS	\$15,000.00	1	\$15,000.00			0.00	\$0.00	1	\$15,000.00	100.00%

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Previous Period Quantity	Previous Period Earned	Quantity This Period		This Period Total	This Period Earned	Total To Date Quantity	Total To Date Earned	Percent Complete
							Work in Place	Materials Stored					
11	Secondary Sludge Clarifiers												
a	Equipment	1.00	LS	\$170,000.00	1	\$170,000.00			0.00	\$0.00	1	\$170,000.00	100.00%
b	Installation	1.00	LS	\$49,000.00	1	\$49,000.00			0.00	\$0.00	1	\$49,000.00	100.00%
c	Testing	1.00	LS	\$3,000.00	1	\$3,000.00			0.00	\$0.00	1	\$3,000.00	100.00%
12	Effluent Trough Weirs, Baffles												
a	Weirs	1.00	LS	\$18,000.00	1	\$18,000.00			0.00	\$0.00	1	\$18,000.00	100.00%
b	Installation	1.00	LS	\$4,000.00	1	\$4,000.00			0.00	\$0.00	1	\$4,000.00	100.00%
c	Baffles	1.00	LS	\$7,000.00	1	\$7,000.00			0.00	\$0.00	1	\$7,000.00	100.00%
d	Installation	1.00	LS	\$2,000.00	1	\$2,000.00			0.00	\$0.00	1	\$2,000.00	100.00%
e	Troughs	1.00	LS	\$35,000.00	1	\$35,000.00			0.00	\$0.00	1	\$35,000.00	100.00%
f	Installation	1.00	LS	\$10,000.00	1	\$10,000.00			0.00	\$0.00	1	\$10,000.00	100.00%
13	Piping												
a	PW PVC 2" and fittings and valve	1.00	LS	\$1,100.00	1	\$1,100.00			0.00	\$0.00	1	\$1,100.00	100.00%
b	CL PVC 1" and fittings	1.00	LS	\$250.00	1	\$250.00			0.00	\$0.00	1	\$250.00	100.00%
c	PW PVC 1" and fittings	1.00	LS	\$800.00	1	\$800.00			0.00	\$0.00	1	\$800.00	100.00%
d	CL PVC 1 1/2" and fittings	1.00	LS	\$250.00	1	\$250.00			0.00	\$0.00	1	\$250.00	100.00%
e	1 1/2" ball valve	1.00	LS	\$500.00	1	\$500.00			0.00	\$0.00	1	\$500.00	100.00%
f	1" PVC ball valve	1.00	LS	\$500.00	1	\$500.00			0.00	\$0.00	1	\$500.00	100.00%
g	24" butterfly valves	1.00	LS	\$30,000.00	1	\$30,000.00			0.00	\$0.00	1	\$30,000.00	100.00%
h	PVC Installation	1.00	LS	\$6,000.00	1	\$6,000.00			0.00	\$0.00	1	\$6,000.00	100.00%
i	Ductile iron pipe and fittings	1.00	LS	\$4,000.00	1	\$4,000.00			0.00	\$0.00	1	\$4,000.00	100.00%
j	Nut bolt and gasket sets	1.00	LS	\$7,000.00	1	\$7,000.00			0.000000	\$0.00	1	\$7,000.00	100.00%
14	Electrical												
a	Working Drawings	1.00	LS	\$500.00	1	\$500.00			0.00	\$0.00	1	\$500.00	100.00%
b	Lightning protection	1.00	LS	\$16,000.00	1	\$16,000.00			0.00	\$0.00	1	\$16,000.00	100.00%
c	Lighting fixtures materials	1.00	LS	\$17,000.00	1	\$17,000.00			0.00	\$0.00	1	\$17,000.00	100.00%
d	Lighting fixtures labor	1.00	LS	\$6,000.00	1	\$6,000.00			0.00	\$0.00	1	\$6,000.00	100.00%
e	Conduit, wire, trenching, misc	1.00	LS	\$18,000.00	1	\$18,000.00			0.00	\$0.00	1	\$18,000.00	100.00%
f	Temporary Power Budget	1.00	LS	\$1,000.00	1	\$1,000.00			0.00	\$0.00	1	\$1,000.00	100.00%
g	Clarifier Equipment connection	1.00	LS	\$1,400.00	1	\$1,400.00			0.00	\$0.00	1	\$1,400.00	100.00%
h	Demolition	1.00	LS	\$3,000.00	1	\$3,000.00			0.00	\$0.00	1	\$3,000.00	100.00%
i	Testing Budget	1.00	LS	\$1,000.00	1	\$1,000.00			0.00	\$0.00	1	\$1,000.00	100.00%
j	Subtotal - Clarifier # 1			\$672,600.00		\$660,600.00			\$12,000.00			\$672,600.00	100.00%

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Previous Period Quantity	Previous Period Earned	Quantity This Period		This Period Total	This Period Earned	Total To Date Quantity	Total To Date Earned	Percent Complete
							Work In Place	Materials Stored					
15	Clarifier 2												
a	Demolition	1.00	LS	\$1,500.00	1	\$1,500.00			0.00	\$0.00	1	\$1,500.00	100.00%
b	Removal of sludge collection & assoc. elec	1.00	LS	\$1,800.00	1	\$1,800.00			0.00	\$0.00	1	\$1,800.00	100.00%
c	Removal of effluent troughs, weirs, baffles	1.00	LS	\$900.00	1	\$900.00			0.00	\$0.00	1	\$900.00	100.00%
d	Removal of plant water & chem piping	1.00	LS	\$600.00	1	\$600.00			0.00	\$0.00	1	\$600.00	100.00%
e	Removal of lighting, wiring & conduit	1.00	LS	\$3,000.00	1	\$3,000.00			0.00	\$0.00	1	\$3,000.00	100.00%
f	Removal of coating system on interior	1.00	LS	\$35,000.00	1	\$35,000.00			0.00	\$0.00	1	\$35,000.00	100.00%
g	Removal of concrete walkways, handrails	1.00	LS	\$4,500.00	1	\$4,500.00			0.00	\$0.00	1	\$4,500.00	100.00%
16	Concrete												
a	Walkway Concrete	1.00	LS	\$15,000.00	1	\$15,000.00			0.00	\$0.00	1	\$15,000.00	100.00%
b	Grout on bottom	1.00	LS	\$17,000.00	1	\$17,000.00			0.00	\$0.00	1	\$17,000.00	100.00%
c	Walkway Formwork/Rebar	1.00	LS	\$45,000.00	1	\$45,000.00			0.00	\$0.00	1	\$45,000.00	100.00%
d	Formwork supports	1.00	LS	\$45,000.00	1	\$45,000.00			0.00	\$0.00	1	\$45,000.00	100.00%
17	Painting												
a	Sandblast interior of clarifier	1.00	LS	\$2,000.00	1	\$2,000.00			0.00	\$0.00	1	\$2,000.00	100.00%
b	Hydroblast exterior of clarifier	1.00	LS	\$9,000.00	0	\$0.00	1		1.00	\$9,000.00	1	\$9,000.00	100.00%
c	Paint interior wall of Clarifier	1.00	LS	\$10,000.00	1	\$10,000.00			0.00	\$0.00	1	\$10,000.00	100.00%
d	Paint exterior wall of Clarifier	1.00	LS	\$12,000.00	0	\$0.00	1		1.00	\$12,000.00	1	\$12,000.00	100.00%
e	Paint clarifier mechanism	1.00	LS	\$18,000.00	1	\$18,000.00			0.00	\$0.00	1	\$18,000.00	100.00%
f	Paint piping	1.00	LS	\$6,000.00	1	\$6,000.00			0.00	\$0.00	1	\$6,000.00	100.00%
18	Handrails												
a	Handrail materials	1.00	LS	\$19,000.00	1	\$19,000.00			0.00	\$0.00	1	\$19,000.00	100.00%
b	Handrail installation	1.00	LS	\$15,000.00	1	\$15,000.00			0.00	\$0.00	1	\$15,000.00	100.00%
19	Secondary Sludge Clarifiers												
a	Equipment	1.00	LS	\$170,000.00	1	\$170,000.00			0.00	\$0.00	1	\$170,000.00	100.00%
b	Installation	1.00	LS	\$49,000.00	1	\$49,000.00			0.00	\$0.00	1	\$49,000.00	100.00%
c	Testing	1.00	LS	\$3,000.00	1	\$3,000.00			0.00	\$0.00	1	\$3,000.00	100.00%
20	Effluent Trough Weirs, Baffles												
a	Weirs	1.00	LS	\$18,000.00	1	\$18,000.00			0.00	\$0.00	1	\$18,000.00	100.00%
b	Installation	1.00	LS	\$4,000.00	1	\$4,000.00			0.00	\$0.00	1	\$4,000.00	100.00%
c	Baffles	1.00	LS	\$7,000.00	1	\$7,000.00			0.00	\$0.00	1	\$7,000.00	100.00%
d	Installation	1.00	LS	\$2,000.00	1	\$2,000.00			0.00	\$0.00	1	\$2,000.00	100.00%
e	Troughs	1.00	LS	\$35,000.00	1	\$35,000.00			0.00	\$0.00	1	\$35,000.00	100.00%
f	Installation	1.00	LS	\$10,000.00	1	\$10,000.00			0.00	\$0.00	1	\$10,000.00	100.00%

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Previous Period Quantity	Previous Period Earned	Quantity This Period		This Period Total	This Period Earned	Total To Date Quantity	Total To Date Earned	Percent Complete
							Work In Place	Materials Stored					
21	<i>Piping</i>												
a	PW PVC 2" fittings and valve	1.00	LS	\$1,100.00	1	\$1,100.00			0.00	\$0.00	1	\$1,100.00	100.00%
b	CL PVC 1" and fittings	1.00	LS	\$250.00	1	\$250.00			0.00	\$0.00	1	\$250.00	100.00%
c	PW PVC 1" and fittings	1.00	LS	\$800.00	1	\$800.00			0.00	\$0.00	1	\$800.00	100.00%
d	CL PVC 1 1/2" and fittings	1.00	LS	\$250.00	1	\$250.00			0.00	\$0.00	1	\$250.00	100.00%
e	1 1/2" ball valve	1.00	LS	\$500.00	1	\$500.00			0.00	\$0.00	1	\$500.00	100.00%
f	1" PVC ball valve	1.00	LS	\$500.00	1	\$500.00			0.00	\$0.00	1	\$500.00	100.00%
g	24" butterfly valves	1.00	LS	\$30,000.00	1	\$30,000.00			0.00	\$0.00	1	\$30,000.00	100.00%
h	PVC installation	1.00	LS	\$6,000.00	1	\$6,000.00			0.00	\$0.00	1	\$6,000.00	100.00%
i	Ductile iron pipe and fittings	1.00	LS	\$4,000.00	1	\$4,000.00			0.00	\$0.00	1	\$4,000.00	100.00%
j	Nut bolt and gasket sets	1.00	LS	\$7,000.00	1	\$7,000.00			0.00	\$0.00	1	\$7,000.00	100.00%
22	<i>Electrical</i>												
a	Working Drawings	1.00	LS	\$500.00	1	\$500.00			0.00	\$0.00	1	\$500.00	100.00%
b	Lighting protection	1.00	LS	\$16,000.00	1	\$16,000.00			0.00	\$0.00	1	\$16,000.00	100.00%
c	Lighting fixtures materials	1.00	LS	\$17,000.00	1	\$17,000.00			0.00	\$0.00	1	\$17,000.00	100.00%
d	Lighting fixtures labor	1.00	LS	\$6,000.00	1	\$6,000.00			0.00	\$0.00	1	\$6,000.00	100.00%
e	Conduit, wire, trenching, misc	1.00	LS	\$18,000.00	1	\$18,000.00			0.00	\$0.00	1	\$18,000.00	100.00%
f	Temporary Power Budget	1.00	LS	\$1,000.00	1	\$1,000.00			0.00	\$0.00	1	\$1,000.00	100.00%
g	Clarifier Equipment connection	1.00	LS	\$1,400.00	1	\$1,400.00			0.00	\$0.00	1	\$1,400.00	100.00%
h	Demolition	1.00	LS	\$3,000.00	1	\$3,000.00			0.00	\$0.00	1	\$3,000.00	100.00%
i	Testing Budget	1.00	LS	\$1,000.00	1	\$1,000.00			0.00	\$0.00	1	\$1,000.00	100.00%
	Subtotal - Clarifier # 2			\$672,600.00		\$651,600.00			0.00	\$21,000.00		\$672,600.00	
	Clarifier 1 inside blast & paint lower half	1.00	LS	\$17,612.46	1	\$17,612.46			0.00	\$0.00	1	\$17,612.46	100.00%
	Clarifier 1 hydroblast credit	1.00	LS	-\$4,500.00	1	\$0.00	1	1.00	1.00	-\$4,500.00	1	-\$4,500.00	100.00%
	Clarifier 2 inside blast & paint lower half	1.00	LS	\$17,612.46	1	\$17,612.46	1	0.00	0.00	\$0.00	1	\$17,612.46	100.00%
	Clarifier 2 Influent 90 & Pipe Replacement	1.00	LS	\$4,563.99	1	\$4,563.99			0.00	\$0.00	1	\$4,563.99	100.00%
	Relocate light poles - Both Clarifiers	1.00	LS	\$1,558.11	1	\$1,558.11			0.00	\$0.00	1	\$1,558.11	100.00%
	Replace, Paint 24" D.I.P. Between Clarifiers	1.00	LS	\$12,832.00	1	\$12,832.00			0.00	\$0.00	1	\$12,832.00	100.00%
	Contract Total			\$1,447,000.00		\$1,468,179.02			0.00	\$28,500.00		\$1,496,679.02	100.00%

WAIVER AND RELEASE OF ALL CLAIMS UPON FINAL PAYMENT

Project: WWTP Clarifier Rehabilitation
Date of Contract: October 26, 2007

Project No. WSO 7011
Contract No. 070-07/5V

The undersigned contractor for the above-referenced contract, in consideration of final payment in the sum of \$ 74,833.95, the receipt and sufficiency of which is acknowledged, hereby waives and releases any and all claims and right to make any claim for any and all labor, services, materials, and equipment furnished to the City of Vero Beach ("City") and arising under or by virtue of the above-referenced contract and changes thereto and hereby agrees to indemnify and hold harmless the City from any and all claims of any subcontractor having an interest in the contract. The term "subcontractor," as used herein, shall include any and all persons and firms furnishing labor, materials, services, or equipment incorporated into or supplied for the work under the contract, stockpiled for the project, or arising under any equipment-rental agreements.

This waiver and release of all claims is executed by the contractor for itself and its representatives, assigns and successors and covers all past and existing claims for work under the contract. In executing this waiver and release of all claims, I represent and certify to the City that I possess the authority and capacity to execute this waiver and release of all claims for the contractor, its representatives, assigns and successors, and to thereby bind them, and I agree to personally indemnify and hold harmless the City from any and all liabilities and costs, including attorney's fees, as may be imposed upon or incurred by the City because of any defect in or lack of my authority or legal capacity to execute this waiver and release of all claims for the contractor, its representatives, assigns and successors.

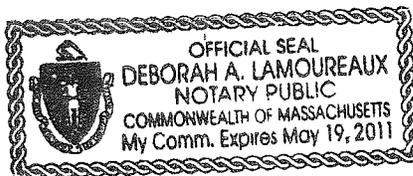
Interstate Engineering Corp
Contractor

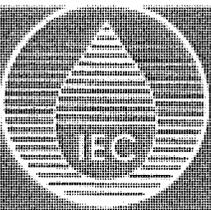
By: Arnold Pike
Print Name: Arnold Pike
Title: President

Massachusetts
STATE OF ~~FLORIDA~~
COUNTY OF Essex

Sworn to and subscribed before me this 24th day of March, 2011, by Arnold Pike, who x is personally known to me OR _____ produced as identification.

Deborah A. Lamoureux
Notary Public
Print Name:
My Commission Expires:





INTERSTATE ENGINEERING CORP.

January 18, 2011

Mr. Jerry Gilbert
City Of Vero Beach
Wastewater Treatment Plant
17 17th Street
Vero Beach, Florida 32960

RECEIVED

JAN 25 2011

WATER & SEWER
DEPARTMENT

RE: Vero Beach WWTP
Clarifier rehabilitation
IEC #0704
General Warranty

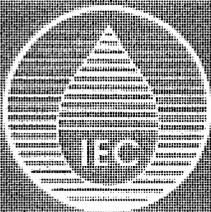
Dear Mr. Gilbert:

Interstate Engineering Corp. hereby warrants the referenced project for one year from the date of November 15, 2010.

Sincerely,

INTERSTATE ENGINEERING CORP.

Robert A. Cook, P.E.
Project Manager



INTERSTATE ENGINEERING CORP.

March 21, 2011

Mr. Jerry Gilbert
City Of Vero Beach
Wastewater Treatment Plant
17 17th Street
Vero Beach, Florida 32960

RE: Vero Beach WWTP
Clarifier rehabilitation
IEC #0704
Clevis warranty

RECEIVED
MAR 25 2011

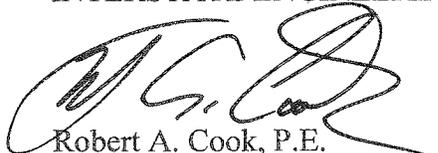
WATER & SEWER
DEPARTMENT

Dear Mr. Gilbert:

As requested Interstate Engineering Corp, the contractor and Ovivo, the manufacturer, warrant the eight skimmer arm clevis pieces for a period of five years beginning on November 15, 2010. Upon the failure of a clevis piece the piece will be replaced by Ovivo and installed by Interstate Engineering Corp.

Sincerely,

INTERSTATE ENGINEERING CORP.


Robert A. Cook, P.E.
Project Manager

FINAL WAIVER AND RELEASE OF CLAIMS

The undersigned, in consideration of prior payments and upon receipt of \$5,831.84 acknowledges it has been paid in full for all labor performed and materials or equipment, furnished for the City of Vero Beach, FL on the job know as Wastewater Treatment Plant Clarifier Rehabilitation and waives and releases any and all claims or rights it may have, for payment or otherwise against Interstate Engineering Corp. any payment or performance bond surety, the owner of the project or any other party, arising out of or in connection with the project.

The undersigned further certifies, as an inducement for Interstate Engineering Corp. to make payments, and recognizing it is an express condition on which payment is made, that the undersigned has made payment for all labor performed and materials furnished on, or with regard to the project and that it has paid all taxes in connection with its operations for the project.

Additionally, the undersigned certifies that all warranties, as required by the specifications for this project will be in full effect from the date of substantial completion, and acknowledges that any and all calls for warranty service will be handled in a manner commensurate with the project specifications.

SUBCONTRACTOR/SUPPLIER:

Paragon Electric of Vero, Inc.

9120 16th Place

Vero Beach, FL 32966

By: Thomas E. Grams

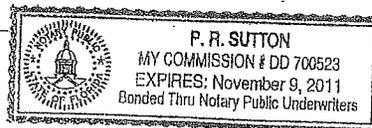
Title: President

Thomas E. Grams, appeared before me and made oath that he has read this Unconditional Waiver and Release of Claims, that he has personal knowledge of the facts recited, is authorized to make oath to those facts on behalf of the subcontractor/supplier and that the statements recited are true and correct.

Subscribed and sworn to me this 10th day of Feb., 2011.

Notary Public

P. R. Sutton



FINAL WAIVER AND RELEASE OF CLAIMS

The undersigned, in consideration of prior payments and upon receipt of \$9,007.73 acknowledges it has been paid in full for all labor performed and materials or equipment, furnished for the City of Vero Beach, FL on the job know as Wastewater Treatment plant Clarifier Rehabilitation and waives and releases any and all claims or rights it may have, for payment or otherwise against Interstate Engineering Corp. any payment or performance bond surety, the owner of the project or any other party, arising out of or in connection with the project.

The undersigned further certifies, as an inducement for Interstate Engineering Corp. to make payments, and recognizing it is an express condition on which payment is made, that the undersigned has made payment for all labor performed and materials furnished on, or with regard to the project and that it has paid all taxes in connection with its operations for the project.

Additionally, the undersigned certifies that all warranties, as required by the specifications for this project will be in full effect from the date of substantial completion, and acknowledges that any and all calls for warranty service will be handled in a manner commensurate with the project specifications.

SUBCONTRACTOR/SUPPLIER:
Liberty Painting Co., Inc.
1598 Wehrle Dr.
Williamsville, NY 14221

By: DARON
Title: President

Darren DeRose, appeared before me and made oath that he has read this Unconditional Waiver and Release of Claims, that he has personal knowledge of the facts recited, is authorized to make oath to those facts on behalf of the subcontractor/supplier and that the statements recited are true and correct.

Subscribed and sworn to me this 14th day of February, 2011.

Notary Public Gregory M. Jasinski

Gregory M. Jasinski
01JA611260
Notary Public, State of New York
Qualified in Erie County
My commission expires JULY 6th, 2012



WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$ 10.00, hereby waives and released its lien and right to claim a lien for labor, services, or material furnished to:

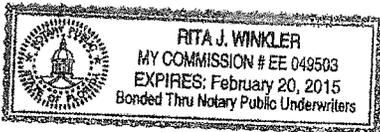
Interstate Engineering Corp on the job of
your customer

City of Vero Beach to the following
the owner

described property:

Description of property

17 17TH ST
A/K/A Vero Beach WWTTP Clarifier Rehab



Dated on 3/29/2011

Lienor Name Dixie Metal Products I.

Address 442 SW 54 CT

Opala FL 34474

By [Signature]

Printed Name James E Wright, CFO

Rita J Winkler 3/29/11

Note: This is a summary form prescribed by Section 713.20, Florida Statutes (1996).
Effective October 1, 1996, a person may not require a lienor to furnish a waiver or release of lien that is different from the statutory form.



WAIVER AND RELEASE OF LIEN
UPON FINAL PAYMENT

582-163236

The undersigned lienor, in consideration of the final payment in the amount of \$0.00 hereby waives and releases its lien and right to claim a lien for labor, services or materials invoiced to INERSTATE ENGINEERING CORP on the job of CITY OF VERO BEACH (owner), to the following described property:

17TH STREET, VERO BEACH, FLORIDA, "VERO WWTP", BOND NUMBER 929430767, INDIAN RIVER COUNTY, FLORIDA.

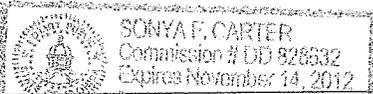
DATED on MARCH 29, 2011

H D SUPPLY WATERWORKS LTD
501 W CHURCH STREET FLR 4
ORLANDO FL 32805

By: Lisa Wiedman
LISA WIEDMAN
CREDIT MANAGER

Sworn to and subscribed before me this MARCH 29, 2011

Sonya F. Carter
Signature of Notary Public
Commissioned State of Florida


Print, Type or Stamp
Name of Notary Public

Personally Known XX OR, Produced Identification N/A

Type of Identification Produced N/A

FINAL WAIVER AND RELEASE OF CLAIMS

The undersigned, in consideration of prior payments and upon receipt of \$0.00 acknowledges it has been paid in full for all labor performed and materials or equipment, furnished for the City of Vero Beach, FL on the job know as Wastewater Treatment plant Clarifier Rehabilitation and waives and releases any and all claims or rights it may have, for payment or otherwise against Interstate Engineering Corp. any payment or performance bond surety, the owner of the project or any other party, arising out of or in connection with the project.

The undersigned further certifies, as an inducement for Interstate Engineering Corp. to make payments, and recognizing it is an express condition on which payment is made, that the undersigned has made payment for all labor performed and materials furnished on, or with regard to the project and that it has paid all taxes in connection with its operations for the project.

Additionally, the undersigned certifies that all warranties, as required by the specifications for this project will be in full effect from the date of substantial completion, and acknowledges that any and all calls for warranty service will be handled in a manner commensurate with the project specifications.

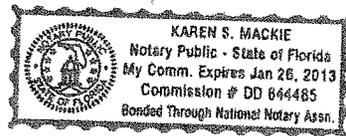
SUPPLIER:
Gene Contracting Demolition, Inc.

By: Jean Mezwick
Title: Pres

JEAN MEZWICK, appeared before me and made oath that he has read this Unconditional Waiver and Release of Claims, that he has personal knowledge of the facts recited, is authorized to make oath to those facts on behalf of the subcontractor/supplier and that the statements recited are true and correct.

Subscribed and sworn to me this 14 day of FEB., 2011.

Notary Public Karen S. Mackie



FINAL WAIVER AND RELEASE OF CLAIMS

The undersigned, in consideration of prior payments and final payment of **\$4,115.80** acknowledges it has been paid in full for all labor performed and materials or equipment, furnished for the **City of Vero Beach, FL** on the job known as **Wastewater Treatment Plant Clarifier Rehabilitation** and waives and releases any and all claims or rights it may have, for payment or otherwise against Interstate Engineering Corp. any payment or performance bond surety, the owner of the project or any other party, arising out of or in connection with the project.

Additionally, the undersigned certifies that all warranties, as required by the specifications for this project will be in full effect from the date of substantial completion, and acknowledges that any and all calls for warranty service will be handled in a manner commensurate with the project specifications.

SUPPLIER:

Ovivo USA, LLC
4255 Lake Park Blvd. Suite 100
Salt Lake City, UT 84120

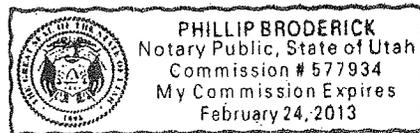
By: 

Title: Credit Supervisor

BURKE PRICE, appeared before me and made oath that he has read this Unconditional Waiver and Release of Claims, that he has personal knowledge of the facts recited, is authorized to make oath to those facts on behalf of the subcontractor/supplier and that the statements recited are true and correct.

Subscribed and sworn to me this 5th day of APRIL, 2011.

Notary Public 



WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

1308165-7011431

The undersigned lienor, in consideration of the final payment in the amount of \$0.00 hereby waives and releases its lien and right to claim a lien for labor, services or materials furnished to INTERSTATE ENGINEERING CORP on the job of CITY OF VERO BEACH (owner), to the following described project

17TH STREET, VERO BEACH, FLORIDA, "VERO WASTEWATER TREATMENT PLANT CLARI REHABILITATION", BOND NUMBER 929430767, INDIAN RIVER COUNTY, FLORIDA.

DATED on MARCH 30, 2011

NEFF RENTAL INC
ATTN: BEVERLY GORMAN
1860 MARTIN L KING JR BLVD
RIVIERA BEACH FL 33404

By: _____
MICHAEL STROZAK
BRANCH MANAGER

Sworn to and subscribed before me this MARCH 30, 2011

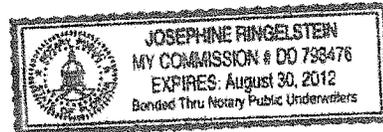


Signature of Notary Public
Commissioned State of Florida



Print, Type or Stamp
Name of Notary Public

Personally Known XX OR, Produced Identification N/A



FINAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, for and in consideration of the payment of the sum of ten and 10.00 /1.00 Dollars (10.00) paid by Interstate Engineering

receipt of which is hereby acknowledged.

BROTHERS CONCRETE PUMPING does hereby release and relinquish all lien rights against the subject property for all materials and/or labor furnished through 3/30/11 on the following described premises.

City of Vero Beach
Clarifiers Rehabilitation

In Witness Whereof, I have hereunto set my hand and seal this 30 day of March, 2011.

WITNESS

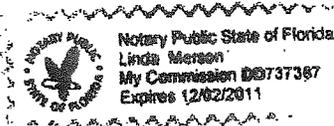
BROTHERS Concrete Pumping
Seal
By [Signature]
Title

STATE OF FLORIDA
COUNTY OF Broward

Sworn and subscribed before me this 30 day of March, 2011.

My Commission Expires:

Linda Merson
Notary Public, State of Florida at large



Payer: 12828444
Form: Final Release
4
Date: April 1, 2011

WAIVER AND RELEASE OF LIEN FINAL RELEASE

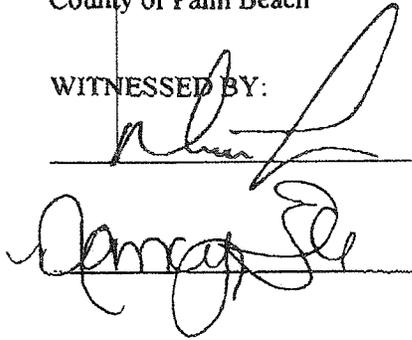
The undersigned lienor, in consideration of the final payment in the amount of **TEN DOLLARS AND ZERO CENTS (\$10.00)**, hereby waives and releases its lien and right to claim a lien for labor, services or materials furnished on the job of **INTERSTATE ENGINEERING CORP** on the job of **CITY OF VERO BEACH (OWNER)** to the following property described as:

**FILTER REHABILITATION PROJECT
17 17TH STREET
INDIAN RIVER COUNTY, FL**

DATED on the 1 Day of April, 2011

State of Florida
County of Palm Beach

WITNESSED BY:

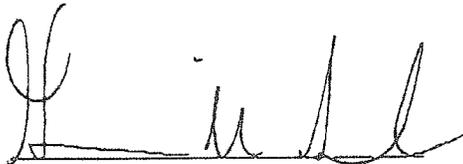


LIENOR: CEMEX Construction Materials Florida, LLC FKA Rinker
Materials of Florida, Inc. DBA Cemex and/or Cemex
Construction Materials, LP.
1001 Jupiter Park Drive # 114
Jupiter, FL 33458

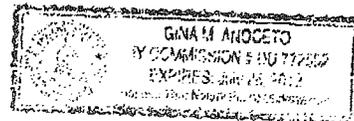
BY: 
Printed Name: Doris Beraldi

The foregoing was acknowledged before me this April 1, 2011 by Doris Beraldi, Coastal Region Collection Specialist, who is personally known to me and who took an oath.

MY COMMISSION EXPIRES:



NOTARY PUBLIC



NOTE: This is a statutory form prescribed by Section 713.20, Florida Statutes (1996). Effective October 1, 1996, a person may not require a lienor to furnish a waiver of release of lien that is different from the statutory form. This release is conditional upon clearance of funds. DBeraldi

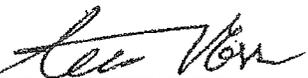
**WAIVER AND RELEASE OF LIEN
FINAL PAYMENT**

The undersigned lienor, in consideration of the final payment in the amount of TEN AND 00/100 (\$10.00), hereby releases all liens, lien rights, claims or demands of any kind whatsoever, for labor, services or materials furnished to INTERSTATE ENGINEERING *RML* on the job of CITY OF VERO BEACH which the undersigned now has against the property legally described as:

**17 17 ST VERO BEACH
POR OF LAND IN INDIAN RIVER COUNTY FLORIDA
**CLARIFIER REHABILITATION
INDIAN RIVER COUNTY, FL**

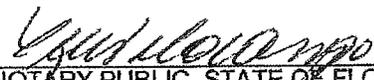
Dated on March 31, 2011

Lienors Name SAFWAY SERVICES, LLC
Address 2365 ALI BABA AVENUE
OPA LOCKA, FL 33054

By: 
Title: BRANCH MANAGER
Printed Name Steve Voss

The foregoing instrument was acknowledged before me this 31 day of March , 2011, by Steve Voss who is personally known to me or who has produced _____ as identification and who did take an oath.




NOTARY PUBLIC, STATE OF FLORIDA

My commission Expires: 11-03-2012

Note: This is a statutory form prescribed by section 713.20, Florida statutes (1996) Effective October 1 1996, a person may not require a lienor to furnish a waiver or release of lien that is different from the statutory form.

re: 1819288 - 20003



WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

994779

The undersigned lienor, in consideration of the final payment in the amount of \$10.00 hereby waives all lien and right to claim a lien for labor, services or materials invoiced to INTERSTATE ENGINEERING the job of CITY OF VERO BEACH (owner), to the following described property:

17TH STREET, VERO BEACH, FLORIDA, "VERO WASTEWATER TREATMENT PLANT CLARI REHABILITATION", BOND NUMBER 929430767, INDIAN RIVER COUNTY, FLORIDA.

DATED on MARCH 31, 2011

UNITED RENTALS (NORTH AMERICA)
ATTN: ARTHUR YOUNG (704) 916-4827
CHARLOTTE NC 28269

By: *Debbie Perez*
DEBBIE PEREZ
Lien Release Supervisor

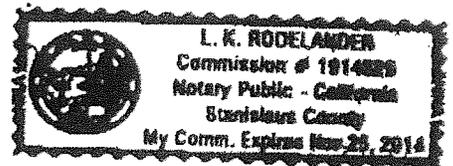
Sworn to and subscribed before me this MARCH 31, 2011

L.K. Rodelandar
Signature of Notary Public
Commissioned State of Florida

L.K. Rodelandar, Notary Public
Print, Type or Stamp
Name of Notary Public

Personally Known OR, Produced Identification N/A

Type of Identification Produced N/A



4-A)

MEMO
VERO BEACH MUNICIPAL POWER PLANT



DATE: April 12, 2011

TO: Monte Falls
Interim City Manager

FROM: Jim Stevens 
Director of Power Resources

SUBJECT: Changes to Florida Gas Utilities Bylaws and Interlocal Agreement

Recommendation:

I am requesting that the above item be placed on the May 3, 2011 Council agenda for approval.

- As members of Florida Gas Utility (FGU) staff is recommending approval of the changes to the Florida Gas Utilities Bylaws and Interlocal Agreement.
- A formal Resolution by each member of FGU is required for executing the agreement.

Funding:

- No funding.

Background:

The Florida Gas Utility (FGU) has distributed to all members copies of the changes to the agreement and the final changed agreement as well as a summary of the changes and a recommended Resolution.

Please advise if there are any questions concerning this matter.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE EXECUTION OF THE THIRD AMENDED AND RESTATED INTERLOCAL AGREEMENT TO BE EXECUTED AMONG THE MEMBERS OF FLORIDA GAS UTILITY; PROVIDING CERTAIN AUTHORIZATIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING CERTAIN OTHER DETAILS WITH RESPECT THERETO.

WHEREAS, the City of Vero Beach, Florida, has entered into an Interlocal Agreement dated September 1, 1989, as amended on June 1, 1992 and restated by the Second Amended and Restated Interlocal Agreement dated July 27, 1999 (the "Interlocal Agreement"), with other member cities, authorities and public agency ("Members") for the purpose of organizing Florida Gas Utility ("FGU") as a public body corporate and politic, for the purchase of natural gas and the performance of other activities; and

WHEREAS, the City has participated with FGU and the other Members with respect to the organization of FGU under the Florida Interlocal Corporation Act, Section 163.01, Florida Statutes, and the adoption of its policies and procedures, pursuant to which the City and the other Members are bound; and

WHEREAS, FGU has been duly organized pursuant to the Interlocal Agreement and has approved and provided its Members a Third Amended and Restated Interlocal Agreement in the form attached hereto as Exhibit A as it may be modified or amended as provided herein (the "Third Amended and Restated Interlocal Agreement") for consideration and execution among its Members, to be its governing document; and

WHEREAS, the Board of FGU, by resolution unanimously adopted at a meeting duly called and held on March 25, 2011, and at which Members holding 70% of the weighted voting rights were present and voting throughout, approved the form of the Third Amended and Restated Interlocal Agreement, subject to the execution thereof by all Members of FGU and the filing thereof with the Clerk of the Circuit Court of Alachua County, Florida;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF VERO BEACH, FLORIDA, that:

Section 1. Authority. This Resolution is adopted pursuant to the Constitution and laws of the State of Florida, including, particularly, Section 163.01, Florida Statutes, and Chapter 166, Florida Statutes.

Section 2. Definitions. Unless the context otherwise requires, all terms used herein in capitalized form shall have the same meanings ascribed to such terms in the Third Amended and Restated Interlocal Agreement.

Section 3. Findings. It is hereby ascertained, determined and declared that the City is authorized under the authority cited above to approve the form and authorize the execution and delivery of the Third Amended and Restated Interlocal Agreement in the manner herein provided.

Section 4. Approval of Third Amended and Restated Interlocal Agreement. The Third Amended and Restated Interlocal Agreement, in substantially the form attached hereto as Exhibit A, is hereby approved, subject to such changes, insertions and omissions and filling in of blanks therein as may be approved and made to such form of Third Amended and Restated Interlocal Agreement by the officers of the City designated below executing the same and upon execution by all Members (together or in counterparts), shall be filed in the public records as required by law. The Third Amended and Restated Interlocal Agreement shall be dated as of March 25, 2011, the date of approval thereof by the FGU Board, and shall become effective upon the due execution by all Members of FGU and the filing thereof with the Clerk of the Circuit Court of Alachua County, Florida.

Section 5. Authorizations Concerning Third Amended and Restated Interlocal Agreement.

A. The Mayor or Mayor Pro Tem of the City and the City Clerk or any Deputy City Clerk of the City shall be and are hereby authorized to execute the Third Amended and Restated Interlocal Agreement for and on behalf of the City pursuant to the terms hereof, in substantially the forms attached hereto as Exhibit A with such changes, insertions and omissions and filling in of blanks therein as the Mayor or Mayor Pro Tem may approve, such approval to be conclusively evidenced by the execution thereof.

B. The Mayor or Mayor Pro Tem and Clerk or any Deputy Clerk of the City, the Director of Finance of the City, and such other officers and employees of the City as may be designated by the Mayor or Mayor Pro Tem, including the representatives of the City on the Board of Directors or Executive Committee of FGU, are each designated as agents of the City in connection with the issuance and delivery of the Third Amended and Restated Interlocal Agreement and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents and contracts on behalf of the City that are necessary or desirable in connection with the execution and delivery thereof, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

Section 6. Repeal of Inconsistent Resolutions. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

This Resolution passed and adopted this ____ day of _____, 2011.

APPROVED:

CITY OF VERO BEACH

By _____
Mayor

ATTEST:

Clerk

(SEAL)

Approved as to form and legality.

Acting Wayne R. Cornett
City Attorney
City of Vero Beach, Florida

Approved as conforming to municipal policy:

Interim Mark K. Falls
City Manager
City of Vero Beach, Florida

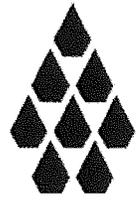
Filed in my office this ____ day of _____, 2011.

City Clerk

#10225037_v2

Approved as to technical requirements:

[Signature]
Power Resources Director
City of Vero Beach, Florida



Date: April 5, 2011

To: Jim Stevens

From: Katrina Warren

Re: Third Amended and Restated Interlocal Agreement

RECEIVED

APR 11 2011

V.B. POWER RESOURCES

FGU's Board of Directors approved changes to FGU's Bylaws and Interlocal Agreement at the March 25, 2011 meeting. In order for these changes to be effective, each and every member of FGU must return a fully executed copy of the Third Amended and Restated Interlocal Agreement. We are providing a Resolution for the approval and authorization of the execution of the amended Interlocal Agreement from your governing body. If you would like a member of the FGU staff to be present at your Governing Board Meeting to discuss these changes, please let us know immediately so we are able to make appropriate arrangements. If you have any questions, please give us a call. We would ask that you expedite this approval process as we are trying to have the changes effective by our June Board Meeting.

4619 N.W. 53RD Avenue
Gainesville, FL 32653
Ph: 352/334-0770 ext. 109
Fax: 352/334-0789
E-Mail: katrina@flgas.com



6-A)



April 20, 2011

Tammy Vock
City Clerk
City of Vero Beach
1053 20th Pl
Vero Beach, FL 32960

Dear Ms Vock:

As President of HR Dynamics, which has been contracted for the executive search to recruit a City Manager, would like to request time on the agenda at the May 3, 2011 Council meeting.

The purpose will be to discuss the credentials of the final applicants for the City Manager position.

Please let me know if I can provide further information.

Sincerely yours,

David S Johnson
President

DSJ/ks



Office of City Attorney
MEMORANDUM

To: Mayor Kramer, Vice-Mayor Turner, and City Councilmembers
From: Wayne Coment, Acting City Attorney *wcc*
Subject: Status Change — Assistant City Attorney
Date: April 27, 2011

Assistant City Attorney Peggy Lyon's employment status has been as "permanent part-time" since returning to work for the City in October of 2000. Prior to that, Ms. Lyon worked for the City as a full-time employee for three years in the mid-1990s. Ms. Lyon's current work schedule generally coincides with the school calendar, allowing her to work from about 7:00 a.m. through 3:00 p.m. during the school year. During the summers, she is in the office much less frequently, though she continues to work on projects and covers occasional meetings and fills in for vacations on a limited basis when requested and when possible. She is also normally out of the office for all other school calendar holidays and breaks.

The currently reduced legal staff has been handling the City's regular day-to-day legal work, as well as dealing with the increased City Council meetings and legal work and the major issues facing the City such as the potential electric utility and water & sewer utility transactions. Thus it is important to address the part-time limitations on Ms. Lyon's services before the summer school break begins. The loss of the majority of her services for the summer makes this matter especially urgent.

Ms. Lyon has advised me that she is willing and able to return to work full-time as of mid-June. While the city attorney is a Charter officer and responsible for the personnel matters of the city attorney's office, I felt that in light of my status as "acting" city attorney that it would be appropriate to seek your approval for Ms. Lyon's change in employment status prior to my authorizing such change. Therefore, I am requesting that the council approve a change in status for Ms. Lyon's employment from permanent part-time to full-time.

Please let us know if we may provide any additional information for your review. Thank you for your consideration in this matter.

Addendum to the City Council Meeting Agenda

__ New Business $\frac{2}{-}$

9A-1)

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priority

Title: FPL Report

Summary of your points for discussion:

All agenda Additions - Public need or issue addressed:

Progress on FPL

Statement of the proposed solution to the public need or issue: To be determined

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

3/16/10; 4/6/10; 6/15/10; 11/8/10; 12/7/10; 12/21/10; 1/4/11; 1/18/11; 2/1/11;

2/15/11; 3/1/11; 3/15/11; 4/5/11

Addendum to the City Council Meeting Agenda

New Business Old

9A-2)

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priority _____

Title: OUC Contract

Summary of your points for discussion: Update

All agenda Additions - Public need or issue addressed: Progress on contract changes

Statement of the proposed solution to the public need or issue: To be determined

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

1/5/10; 1/19/10; 2/16/10; 3/2/10; 3/16/10; 4/6/10; 4/20/10; 5/4/10; 11/16/10; 12/7/10;
1/4/11; 1/18/11; 2/1/11; 2/15/11; 3/1/11; 3/15/11; 4/5/11

Addendum to the City Council Meeting Agenda

__ New Business -

9A-3)

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priority __

Title: Water Sewer Update

Summary of your points for discussion:

All agenda Additions - Public need or issue addressed: Insuring best water sewer service for City

Statement of the proposed solution to the public need or issue: To be determined

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

April 5, 2011

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priorit:

9A-4)

Title: Continuation of discussion, consideration of Charter Officer position

Summary of your points for discussion:

All agenda Additions - Public need or issue addressed: Consideration of Council control over Charter Officers

Statement of the proposed solution to the public need or issue: To be determined

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

March 15, 2011

April 5, 2011



AB-1

Addendum to the City Council Meeting Agenda

Author: Pilar Turner

Council Meeting Date: May 3, 2011

Priority 1 of 2

Title: GAI Electrical Consulting Contract

Summary: Disclosure of monthly costs and work products.

Public need or issue addressed: Monitor consultants costs.

Relevant City Charter, code references, legal:

None

Dates of past decisions by Council relevant to the issue:

Award of consulting contract to GAI on April 5

Statement of proposed solution to the public need or issue:

Request City Manager to provide copies of invoices to Council and a monthly review of progress at City Council meeting.

Additional attached documentation includes:

None

Addendum to the City Council Meeting Agenda X New Business C

QB-2)

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priority

Title: Discussion of City Manager position

Summary of your points for discussion:

All agenda Additions - Public need or issue addressed:

Statement of the proposed solution to the public need or issue:

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Special Call City Council meeting agenda for April 28, 2011

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

**SPECIAL CALL CITY COUNCIL MEETING
THURSDAY, APRIL 28, 2011 9:30 A.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

A G E N D A

- 1. CALL TO ORDER**
 - A. Roll Call
 - B. Pledge of Allegiance

- 2. PUBLIC COMMENT**

- 3. DISCUSS APPLICANTS INTERVIEWED FOR CITY MANAGER POSITION**
 - A) Richard Brown
 - B) Kevin Sullivan
 - C) Steven Crowell
 - D) Kenneth Griffin
 - E) James O'Connor

- 4. ADJOURNMENT**

Council Meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal will be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

Addendum to the City Council Meeting Agenda **New Business** **Old**

9B-3)

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priority ___ of

Title: Request for staff presentations on any errors in any electric utility presentation to City Council by an individual or group

Summary of your points for discussion:

If there have been any errors made in Dr. Faherty's/Glen Herran's presentations or any other documents he would like to see them and discuss them.

All agenda Additions - Public need or issue addressed:

Statement of the proposed solution to the public need or issue:

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Brian Heady

Council Meeting Date: May 3, 2011

Price

9B-4)

Title: Consideration of FPL offer

Summary of your points for discussion:

Discussion that took place at the May 2, 2011 meeting

All agenda Additions - Public need or issue addressed:

Statement of the proposed solution to the public need or issue:

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

FPL Letter of Intent

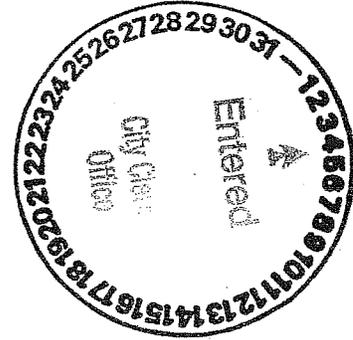
Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:



FPL

April 4, 2011

The Honorable Jay Kramer
Mayor, City of Vero Beach
P.O. Box 1389
Vero Beach, FL 32961-1389



Dear Mayor Kramer:

On behalf of Florida Power & Light Company, I am pleased to submit the attached Letter of Intent ("LOI") expressing FPL's interest in purchasing the City of Vero Beach electric utility system for a cash payment of up to \$100 million.

FPL's offer, as outlined in the LOI, is based upon meeting two objectives: providing Vero Beach electric customers the same rates that FPL customers enjoy; and ensuring that existing FPL customers are not negatively affected by the transaction. The offer effectively accomplishes these purposes. Of course, the highlight of the offer, if accepted, is that going forward the **residents of Vero Beach will enjoy the same rates and programs that FPL customers enjoy**. A typical residential bill for FPL customers is currently the lowest of all 55 electric utilities in the state according to the February FMEA price survey.

The sale of the system to FPL under the terms of the LOI, as reflected in a mutually acceptable definitive agreement, would provide the City and its residents with important benefits that include the following:

- i. Residents of Vero Beach will enjoy electric service at the same low rates that FPL customers receive, currently a 15 % discount over the City's rates;
 - Based on current prices, City of Vero Beach electric utility customers would see a benefit of over \$11 million in the first year alone, and more than \$100 million in savings over time;
- ii. Residents and businesses of Vero Beach will receive the benefits of FPL's industry leading energy efficiency programs, best in class customer service and exceptional power delivery reliability;
 - FPL's reliability is the best in Florida and among the best in the nation
 - FPL repeatedly has been recognized as a national leader in customer service
 - FPL offers tremendous customer value and savings through industry-leading energy efficiency programs, a few of which are referenced below:
 - i. FPL's On Call[®] program provides customers with additional discounts on electric service of up to \$161 per year, and its current air conditioning replacement program offers up to \$2100 in customer rebates

Florida Power & Light Company

700 Universe Boulevard, Juno Beach, FL 33408

- ii. FPL's Online Home Energy Survey allows customers to obtain a personalized, expert analysis of a home's energy use along with specific ways to save
 - iii. FPL's Business Energy Evaluation, a comprehensive professional, on-site review of a commercial facility's energy usage;
 - iv. Commercial customer rebate programs for the installation of high efficiency lighting, and advanced HVAC and refrigeration technologies;
- iii. City of Vero Beach customers will receive electric service from one of the cleanest and most fuel-efficient electric utilities in the nation:
 - FPL's investments in fuel-efficient generating plants and technology is a large reason why its customer bills are low today and why FPL will continue to provide long term benefits to customers even if fuel prices increase
 - FPL's investments have saved customers nearly \$3 billion in fuel costs since 2002; looking ahead, FPL estimates that these investments will save customers an additional \$1 billion a year by 2014;
- iv. The City of Vero Beach will receive a purchase price that includes:
 - a cash payment in an amount up to \$100 million, available for use by the City in its discretion, including for the defeasance of debt or other contractual obligations
 - the assumption by FPL of certain liabilities that otherwise would be the City's responsibility;
- v. Active City of Vero Beach electric utility employees will have the assurance of 2 years of employment, as well as access to employment opportunities with FPL, to allow for an orderly transition of operations and to minimize the impact for existing city employees;
- vi. FPL will assume the City's pension liability for its electric utility employees;
- vii. FPL will provide additional revenue streams in the form of property taxes to the City, and other entities operating within the area served by the City's electric utility, totaling more than \$1.7 million and including more than \$500,000 in support of the Indian River County school system;
- viii. In addition to property taxes, the City will receive the following revenue streams from FPL:

 - Franchise fee revenues from FPL, estimated in the range of \$1.4 million annually
 - Annual lease payments from FPL for the property on which generation assets are located;
- ix. The City will retain ownership of the real property on which the generation assets are located and will be able to sell or use that property for other purposes when the generation assets are decommissioned; and
- x. FPL will assume the City's future obligation for dismantlement of the generating assets.

We respectfully request that the LOI be presented to the City Council for approval and authorization for the city staff to enter into formal negotiation of an Agreement for Purchase and Sale which would then be presented to the City Council for final approval.

Personally, and on behalf of FPL, I want to thank you and your staff for the professional manner the city has displayed throughout the initial review and due diligence process. We look forward to working closely with you and your staff as we proceed with this transaction, and in establishing a beneficial and productive partnership with and for the City of Vero Beach and its customers.

Although you are very familiar with FPL, I am also including a set of materials that may be of interest to you and others as you consider making FPL your new provider of electric service. I am happy to supply you with additional copies at your request.

Sincerely,

A handwritten signature in cursive script that reads "Pam Rauch".

Pam Rauch
Vice President
Corporate and External Affairs

LETTER OF INTENT

This Letter of Intent is entered into as of April ____, 2011, between FLORIDA POWER & LIGHT COMPANY, a corporation organized under the laws of the State of Florida (“*FPL*”) and THE CITY OF VERO BEACH, a municipal corporation in, and organized under the laws of, the State of Florida (“*COVB*”). FPL and COVB are jointly referred to as the “*Parties*” and individually as a “*Party*”.

This Letter of Intent is based on our current understanding of the matters set forth herein. It is not a complete statement of all terms and conditions of the Potential Transaction (as such term is defined below), but provides a basis for further discussions and negotiations between the Parties. Except as expressly set forth in Part II, Article 4 below, this Letter of Intent is not, and shall not be deemed or construed to be, legally binding on the Parties and nothing contained herein (except as set forth in said Part II, Article 4) shall impose, or shall be deemed or construed to impose, any obligations, duties, or liabilities on the part of either Party.

PART I

FPL and COVB are considering a potential transaction (the “*Potential Transaction*”), whereby FPL would purchase the electric utility assets of COVB located in Indian River County (“*Assets*”).

The Parties understand that additional discussions and negotiations with respect to the Potential Transaction are required, and that neither Party is bound to proceed with the Potential Transaction unless and until mutually acceptable, definitive Purchase and Sale Agreement and related agreements and documents are negotiated, approved and executed (the “*Definitive Agreements*”) and certain other conditions precedent as set forth in this Letter of Intent and the Definitive Agreements (including without limitation FPL senior management and board of director approvals) are satisfied. However, to facilitate further such discussions and negotiations, the Parties desire to set forth below the basic proposed terms of the Potential Transaction and their understandings with respect thereto:

- A. Purchase Price. Based on the information available to date and subject to the conditions precedent set forth below and in the Definitive Agreements, FPL would acquire the Assets, free and clear of all liens and encumbrances at the closing of the Potential Transaction, for an amount not to exceed **\$100 million** (the “*Purchase Price*”), subject to appropriate adjustments to be mutually agreed upon, including adjustment for accrued pension and other employee-related obligations associated with the Transferred Employees (as defined below) as of the date of the closing of the Potential Transaction. The Purchase Price would be paid in cash or in immediately available funds at such closing, subject to appropriate holdbacks.

- B. Retail Electric Service. Subject to such approvals as may be required by the Florida Public Service Commission (“*FPSC*”), FPL would provide retail electric service to all customers (including COVB facilities) currently served by the COVB electric utility at FPL’s then current FPSC approved retail rates and subject to FPL’s approved electric tariff, all as may be revised from time to time under FPSC jurisdiction. COVB’s adoption of a franchise ordinance on terms acceptable to FPL will be a condition precedent to the closing of the Potential Transaction.
- C. Retention of Employees. FPL shall retain COVB electric utility employees whose services or work assignments are directly associated with the Assets and who are active employees on the closing date (“*Transferred Employees*”) for two (2) years from the closing date on terms and conditions to be negotiated by the Parties.
- D. Transfers to FPL. COVB shall provide to FPL the following:
- i) assignment of all of COVB’s rights and obligations, free of any and all liens and encumbrances, under the contracts related to the Assets;
 - ii) transfer of 100% ownership to all land, buildings fixtures and improvements providing marketable title to the real property related to the Assets (other than the real property on which COVB’s power plant is located (“*Power Plant Real Property*”)), including, but not limited to leases, easements and licenses, free of any and all liens and subject only to those encumbrances approved by FPL in its sole discretion, as well as transfer of 100% ownership to all personal property related to the Assets, free of any and all liens and encumbrances, including but not limited to COVB’s power plant, transmission and distribution facilities, related buildings, equipment, interconnection facilities, switchyard facilities, telecommunication equipment and radios (including all licenses therefor), fuel inventories, fuel tanks, natural gas transportation, tools, spare parts and all other inventories of materials and supplies;
 - iii) transfer of all COVB electric utility accounting books and records, customer-related assets and Transferred Employees-related assets; and
 - iv) transfer of all permits, licenses, contracts, models, systems and rights thereunder associated with the forecasting, modeling, management and operation of the Assets.
- E. Power Plant Real Property. COVB shall retain ownership of the Power Plant Real Property, and FPL shall lease such real property from COVB on terms acceptable to FPL. FPL shall determine, in its sole discretion, if and when the power plant is removed from service. Upon removal of the power plant from service, FPL shall be responsible for dismantling the power plant. Upon completion of such

dismantling, the lease shall terminate and use of such real property shall revert to COVB, which use shall be at the sole discretion of COVB. All costs of any environmental remediation of such real property (other than resulting from releases caused by FPL after the closing of the Potential Transaction) shall be the responsibility of COVB. A condition to the closing of the Potential Transaction shall be that the lease of the Power Plant Real Property to FPL is approved in accordance with the Charter of COVB.

- F. Liabilities. COVB shall retain, and indemnify FPL from, all liabilities (including environmental liabilities) relating to the Assets and Transferred Employees arising from acts, omissions, events, conditions or circumstances occurring prior to the closing of the Potential Transaction.

- G. Orlando Utilities Commission Agreement. As a condition to the closing of the Potential Transaction, COVB shall terminate the Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services Agreement between COVB and the Orlando Utilities Commission dated April 21, 2008. COVB shall be responsible for any payments owed to the Orlando Utilities Commission as a result of such termination.

- H. Florida Municipal Power Agency Entitlements. As a condition to the closing of the Potential Transaction, COVB shall transfer to another FMPA member the rights to receive capacity and energy from the generation entitlements to the following contracts:
 - i) St. Lucie Project Power Sales Contract, by and between the Florida Municipal Power Agency and the COVB, dated June 1, 1982, as amended;
 - ii) St. Lucie Project Power Support Contract, by and between the Florida Municipal Power Agency and COVB, dated June 1, 1982, as amended;
 - iii) Stanton I Power Sales Contract, by and between the Florida Municipal Power Agency, and COVB, dated January 16, 1984;
 - iv) Stanton I Power Support Contract, by and between the Florida Municipal Power Agency, and COVB, dated January 16, 1984; and
 - v) Stanton II Power Sales and Project Support Contract, by and between the Florida Municipal Power Agency, and COVB, dated April 17, 1991.

FPL shall not be responsible for any payments or other liabilities related to such transfer.

- I. Territorial Agreement. As a condition to the closing of the Potential Transaction, the Parties would jointly terminate the Territorial Boundary Agreement dated June 11, 1980, between FPL and COVB.

- J. Pole Leases. COVB shall assign to FPL all of COVB's rights and obligations under agreements leasing, or providing rights to use, any portion of the Assets, including poles.
- K. Separation of Assets. To the extent the Assets need to be separated from other COVB assets, such separation shall be at the cost of COVB.

PART II

ARTICLE 1. DUE DILIGENCE

Section 1.1 FPL shall have the right to evaluate the Potential Transaction through due diligence of COVB and the Assets, including but not be limited to review of information regarding:

- (a) material litigation and claims, including matters threatened but not yet brought;
- (b) defaults, or other issues limiting COVB's rights under the contractual assets;
- (c) regulatory and governmental matters, including operational filings, Federal Energy Regulatory Commission ("**FERC**") and FPSC proceedings and reports to governmental agencies;
- (d) tax matters;
- (e) real property matters, including the marketability of title to all real property (and fixtures and other improvements thereon) owned or leased and assessment of title to other real property rights, including easements;
- (f) environmental matters, including air, surface, groundwater and weather matters and the condition of the properties, assets, sites and surrounding property;
- (g) operational documents/information regarding the assets, including documentation of electrical and steam output maintenance records and plans;
- (h) security and safety plans;
- (i) material contracts;
- (j) instruments of indebtedness, including notes, loans, synthetic leases, guarantees, letters of credit, etc.; and
- (k) labor and employment matters, including employee benefits and compensation,

employee claims and/or litigation, and grievances and/or arbitrations.

In conducting its due diligence, FPL's review would also include, but not be limited to, a review of the physical assets and risk management/insurance records related to the Assets and an environmental audit.

Section 1.2 FPL will use commercially reasonable efforts to complete its due diligence of COVB and the Assets by no later than July 1, 2011. COVB would make available all documents, reports, studies, contracts and other tangible or electronic items and information as may exist relating to the Assets, including the forecasting, modeling, management and operation of the Assets. COVB will make available to FPL all of COVB's certain employees, vendors, contractors and advisors engaged prior to or subsequent to the date of this Letter of Intent so that FPL's representatives may have reasonable access to information developed or retained by such employees, vendors, contractors and advisors in relation to the Assets and reasonable opportunity to discuss such information with such persons.

ARTICLE 2. CONDITIONS PRECEDENT

Section 2.1 COVB shall not be required to execute any Definitive Agreement unless the COVB's City Council approves, in its sole discretion, entering into the Definitive Agreements.

Section 2.2 FPL shall not be required to execute any Definitive Agreement unless FPL determines in its sole discretion that all of the following conditions have been satisfied:

- (a) The due diligence described in Article 1 above has been completed and the results are satisfactory to FPL;
- (b) FPL determines that it can receive all applicable regulatory approvals, including but not limited to approvals by the FPSC and any other state commissions, FERC, the Federal Trade Commission, and the Securities and Exchange Commission, and third party consents, in each case on terms and conditions acceptable to FPL; and
- (c) FPL receives approval from its senior management and board of directors to enter into the Definitive Agreements.

Section 2.3 The Parties understand that the consummation of the Potential Transaction contemplated by this Letter of Intent shall be subject to the satisfaction of the conditions set forth in Section 2.1, the other conditions set forth in this Letter of Intent and the conditions to closing set forth in the Definitive Agreements.

ARTICLE 3. GOOD FAITH NEGOTIATIONS; EXCLUSIVITY

Section 3.1 Good Faith Negotiations. The Parties shall negotiate in good faith through July 1, 2011, unless this Letter of Intent is earlier terminated pursuant to Article 5 below (the “*Negotiation Period*”), to finalize and execute Definitive Agreements subject to the conditions set forth in this Letter of Intent.

Section 3.2 Exclusivity. In order to induce FPL to commit the resources necessary for the due diligence and evaluation of the Potential Transaction, COVB agrees that, during the Negotiation Period: (a) it will not, directly or indirectly, or through an official, employee, representative or by or through the use of any other conduit (including any other person or entity), offer to transfer (whether by asset sale or otherwise) the Assets or any portion thereof to (or offer to enter into any transaction contemplated by the Potential Transaction with) any person or entity, or request, solicit or otherwise encourage inquiries, proposals or offers from any person or entity but FPL with respect to the Assets or any portion thereof or any transaction contemplated by the Potential Transaction; and (b) it will not participate in any discussions or negotiations with, or furnish any non-public information to, any person or entity other than FPL regarding the transfer (whether by asset sale or otherwise) of the Assets or any portion thereof or any transaction contemplated by the Potential Transaction.

ARTICLE 4. EFFECT OF THIS LETTER OF INTENT

Section 4.1 This Letter of Intent:

- (a) except as set forth in Section 4.2 below, does not constitute a legally binding agreement;
 - (b) does not constitute a legally binding offer or agreement to consummate the Potential Transactions or any other transaction or to enter into any Definitive Agreement;
 - (c) does not contain all of the material terms of the Potential Transactions;
- and
- (d) except as set forth in Section 4.2 below, shall not constitute the basis for an agreement by estoppel or otherwise.

Section 4.2 Section 3.2, this Article 4 and Articles 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Letter of Intent constitute a legally binding agreement between the Parties, enforceable against each Party in accordance with their terms.

Section 4.3 Any actions taken by a Party or any other person in reliance on the non-binding terms expressed in this Letter of Intent or statements made (whether orally or in writing) during the negotiations between the Parties shall be at that Party’s own risk, and neither this Letter of Intent (except as set forth in Section 4.2 above) nor any actions or statements (whether written or oral) made by a Party during the course of negotiation, due diligence and evaluation of the Potential Transactions shall be the basis for a contract by estoppel, implied contract or any other legal theory. Unless and until the Definitive Agreements have been duly authorized, executed and delivered by the Parties, no Party shall have any legal obligation, duty, or liability

to the other, expressed or implied, or arising in any other manner under this Letter of Intent, in the course of negotiations as contemplated by this Letter of Intent or in relation to any transaction contemplated by this Letter of Intent (except to the extent provided in Section 4.2 above). No binding commitment shall arise prior to then even if the Parties reach some understanding(s) or agreement(s) in principle.

ARTICLE 5. TERMINATION

Section 5.1 This Letter of Intent shall terminate on the earlier of: (i) execution of the Definitive Agreements, (ii) the expiration of the Negotiation Period, or (iii) written notice by FPL to COVB that FPL is not satisfied (in its sole discretion) with its due diligence.

Section 5.2 Except as expressly set forth in Part II, Article 4 above, upon termination of this Letter of Intent, the Parties shall have no further obligations, duties or liabilities hereunder; provided, however, that the terms and provisions set forth in Articles 4 through 13 shall survive the termination of this Letter of Intent.

ARTICLE 6. CONFIDENTIALITY

Section 6.1 This Letter of Intent (including the terms and conditions hereof and the fact that the Parties have entered into this Letter of Intent) and all information disclosed by a Party to the other under this Letter of Intent or during the negotiation of this Letter of Intent, any Definitive Agreement or the Potential Transaction (“*Confidential Information*”) is confidential and may not be disclosed by a Party to a third party without the other Party’s prior written consent, except that a Party may disclose Confidential Information to its financial, accounting, engineering and legal advisors who have a need to know such information and who agree to maintain its confidentiality. Confidential Information shall not include: (a) information which is or becomes publicly available; (b) information which is or becomes available on a non-confidential basis from a source which is not known to the receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the disclosing Party; (c) information which the receiving Party can demonstrate was legally in its possession prior to disclosure by the disclosing Party; or (d) information which is developed by or for the receiving Party independently of the disclosing Party’s Confidential Information. Notwithstanding the foregoing, this Letter of Intent and any document submitted by a Party to the other under this Letter of Intent or during the negotiation of this Letter of Intent, any Definitive Agreement or the Potential Transaction (“*Confidential Document*”) may be a public record (as defined in Section 119.011, Florida Statutes) and may be open for inspection or copying by any person or entity unless such document is exempted under Section 119.071, Florida Statutes. During the term of this Letter of Intent, FPL may claim that some or all of the Confidential Documents is, or has been treated as, confidential and proprietary by FPL in accordance with Florida law, and is exempt from disclosure under Chapter 119, Florida Statutes. In the event that COVB is requested or required by legal or regulatory authority to disclose any Confidential Information, COVB shall within three (3) days notify FPL of such request or

requirement prior to disclosure so that FPL may seek an appropriate protective order and/or waive compliance with the terms of this Letter of Intent. To the extent reasonably possible, FPL shall endeavor to provide redacted versions of documents containing Confidential Information, upon request of COVB. The Party's obligation of nondisclosure of Confidential Information shall survive the expiration or termination of this Letter of Intent.

ARTICLE 7. COSTS AND EXPENSES

Section 7.1 Each party shall bear its own costs and expenses (including fees of counsel and outside advisors) in connection with the preparation, negotiation, execution and delivery of this Letter of Intent and any Definitive Agreement (whether or not the Potential Transaction is consummated).

ARTICLE 8. LIMITATION ON LIABILITY

Section 8.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS LETTER OF INTENT.

ARTICLE 9. NO THIRD-PARTY BENEFICIARIES

Section 9.1 This Letter of Intent is intended for the benefit of the Parties hereto and is not intended to and does not confer any benefit on any third parties.

ARTICLE 10. CHOICE OF LAW

Section 10.1 This Letter of Intent shall be governed by the laws of the State of Florida without regard to its conflicts of laws principles.

Section 10.2 IN ANY LITIGATION ARISING FROM OR RELATED TO THIS LETTER OF INTENT, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OR INTENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS LETTER OF INTENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS

LETTER OF INTENT.

ARTICLE 11. ASSIGNMENT

Section 11.1 This Letter of Intent may not be assigned or transferred by either Party without the prior written consent of the other Party. Article 4 and the provisions set forth therein shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.

ARTICLE 12. COUNTERPARTS

Section 12.1 This Letter of Intent may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

ARTICLE 13. ENTIRE AGREEMENT

Section 13.1 This Letter of Intent represents the entire agreement and understanding of the Parties regarding the subject matter hereof and supercedes all previous understandings, written or oral. It is the expectation of the Parties that this Letter will be superceded in its entirety by any Definitive Agreement executed by the Parties.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Letter of Intent to be executed by their duly authorized representatives on the first date written above.

FLORIDA POWER & LIGHT COMPANY

By: 
Name: SAM A. FORREST
Title: VICE PRESIDENT



ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

Jay Kramer
Mayor

(City Seal)

Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

Wayne R. Coment
Acting City Attorney

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Approved as to technical requirements:
